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KANSAS
CRIMINAL LAW
AND PRACTICE.

BY IRWIN TAYLOR,
OF THE TOPEKA BAR.

VOL. II.

PART III. STATUTORY CRIMINAL LAW.

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PART III.—STATUTORY CRIMINAL LAW:

CONSTITUTION OF THE UNITED STATES.

ARTICLE 1.—LEGISLATIVE.

(11) § 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

(12) § 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

ARTICLE 2.—EXECUTIVE.

(16) § 4. The president, vice president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE 4.—MISCELLANEOUS.

(21) § 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other

*The paragraph numbers of PART III, shown in **black type**, as well as the section numbers, are the same as in the General Statutes of 1899.

crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

(Head v. Daniels, 38 K. 10.)

AMENDMENTS.

(30) ARTICLE 4. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

(31) ARTICLE 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(O. O. C. & C. G. Rld. Co. v. Larson, 40 K. 301; State v. Whisner, 35 K. 271; State v. Barnett, 3 K. 250.)

(32) ARTICLE 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him;

to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

(34) ARTICLE 8. Excessive bail shall not be required, nor excessive fines paid, nor cruel and unusual punishments inflicted.

(35) ARTICLE 9. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(39) ARTICLE 13.* § 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

(40) ARTICLE 14.† § 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(Head v. Daniels, 38 K. 10; Prohib. Amend. Cases, 24 K. 700.

CONSTITUTION OF THE STATE OF KANSAS.

BILL OF RIGHTS.

(87) Trial by jury. § 5. The right of trial by jury shall be inviolate.

(State *ex rel.* v. City of Topeka, 36 K. 76; Kimball v. Connor, 3 K. 414, 415; Akin v. Davis, 11 K. 581; Hixon v. George, 18 K. 253; *In re* Burrows, 33 K. 675; Atchison Street Rly. Co. v. Mo. Pac. Rly. Co., 81 K. 665; Carpenter v. Carpenter, 30 K. 712; *In re* Rolfs, 30 K. 758; C. B. U. P. Rld. Co. v. A. T. & S. F. Rld. Co., 28 K. 453; State v. Snyder, 50 K. 306; Ross v. Crawford Co.,

* Thirteenth amendment declared adopted by the secretary of state on the 18th day of December, 1865.

† Fourteenth amendment promulgated by the secretary of state, 28th of July, 1868.

16 K. 411; Board of Education v. Scoville, 13 K. 33; City of Emporia v. Volmer, 12 K. 622; State *ex rel.* v. Allen, 5 K. 218.)

(88) Slavery prohibited. § 6. There shall be no slavery in this state; and no involuntary servitude except for the punishment of crime whereof the party shall have been duly convicted.

(89) Religious liberty. § 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

(Anderson v. City of Wellington, 40 K. 173; Hackney v. Vawter, 39 K. 628; Feizel v. Church, 9 K. 592.)

(90) Habeas corpus. § 8. The right to a writ of *habeas corpus* shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

(*In re* Scrafford, 21 K. 735; *In re* Mitchell, McC. 256; Territory v. Cutler, McC. 152.)

(91) Bail. § 9. All persons shall be bailable by sufficient sureties, except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

(92) Trial; defense of accused. § 10. In all prosecutions, the accused shall be allowed to appear and defend in person or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have

been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

(*State v. Knapp*, 40 K. 148; *State v. Simmons*, 39 K. 262; *In re McMicken*, 39 K. 406; *State v. Tilney*, 38 K. 714, 715; *State v. McNaught*, 36 K. 624; *State v. City of Topeka*, 36 K. 76; *State v. Whisner*, 35 K. 271; *State v. McCool*, 34 K. 613; *In re Burrows*, 33 K. 675; *In re Donnelly*, 30 K. 191; *In re Donnelly*, 30 K. 196; *State v. Miller*, 28 K. 47; *State v. Wells*, 28 K. 322; *State v. Sterns*, 28 K. 154; *State v. Schwelter*, 27 K. 499; *Mundy v. Wight*, 26 K. 173; *City of Olathe v. Thomas*, 26 K. 283; *State v. Roark*, 23 K. 147; *State v. Ruth*, 21 K. 583; *In re Holcomb*, 21 K. 628; *In re Scrafford*, 21 K. 735; *State v. Adams*, 20 K. 312; *State v. Crosby*, 17 K. 895; *State v. Potter*, 16 K. 80; *State v. Jones*, 16 K. 608; *City of Olathe v. Adams*, 15 K. 391-5; *State v. Cutler*, 13 K. 134; *State v. Cassady*, 12 K. 550; *State v. Medlicott*, 9 K. 281; *State v. McCord*, 8 K. 232, 242, 243.)

(93) The press; libel. § 11. The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such right; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

(*State v. Verry*, 36 K. 416; *State v. Mayberry*, 33 K. 441; *Mundy v. Wight*, 26 K. 173; *Castle v. Houston*, 19 K. 417.)

(94) No person transported, etc. § 12. No person shall be transported from the state for any offense committed within the same, and no conviction in the state shall work a corruption of blood or forfeiture of estate.

(*State v. Snyder*, 34 K. 425; *State v. Estabrook*, 29 K. 739.)

(95) Treason. § 13. Treason shall consist only in levying war against the state, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the overt act, or confession in open court.

(96) Soldiers. § 14. No soldier shall, in time of peace, be quartered in any house without the consent of the occupant, nor in time of war, except as prescribed by law.

(97) Search and Seizure. § 15. The right of the people to be secure in their persons and property against unreasonable

searches and seizures shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or property to be seized.

(*State v. Skinner*, 34 K. 265; *State v. Brooks*, 33 K. 708; *State v. Gleason*, 32 K. 249; *State v. Blackman*, 32 K. 615; *Greer v. McCarter*, 5 K. 18.)

(98) Debt. § 16. No person shall be imprisoned for debt except in cases of fraud.

(*In re Heath*, 40 K. 337; *In re Dassler*, 35 K. 678; *In re Boyd*, 34 K. 570; *In re Wheeler*, 34 K. 96; *In re Burrows*, 33 K. 675; *Atchison St. Rly. Co. v. Mo. P. Rly. Co.*, 31 K. 665; *Tennent v. Weymouth*, 25 K. 21; *Hauss v. Kohlar*, 25 K. 640; *Doyle v. Boyle*, 19 K. 168; *In re Ebenhack*, 17 K. 618; *Board of Education v. Scoville*, 13 K. 33; *Arthur v. Hale*, 6 K. 165.)

(100) Justice without delay. § 18. All persons, for injuries suffered in person, reputation, or property, shall have remedy by due course of law, and justice administered without delay.

(*K. P. Rly. v. Mower*, 16 K. 582; *Gilchrist v. Schmidling*, 12 K. 264; *Venard v. Cross*, 8 K. 248; *Leavenworth Co. v. Miller*, 7 K. 490.)

ARTICLE 1.—EXECUTIVE.

(109) Pardons. § 7. The pardoning power shall be vested in the governor, under regulations and restrictions prescribed by law.

ARTICLE 2.—LEGISLATIVE.

(124) Who not eligible. § 6. No person convicted of embezzlement or misuse of the public funds shall have a seat in the legislature.

(140) Privileges of members. § 22. For any speech or debate in either house, the members shall not be questioned elsewhere. No member of the legislature shall be subject to arrest—except for felony or breach of the peace—in going to or returning from the place of meeting, or during the continuance of the session; neither shall he be subject to the service of any civil process during the session, nor for fifteen days previous to its commencement.

(*McAnarney v. Caughenaur*, 34 K. 623.)

(145) Impeachment. § 27. The house of representatives

shall have the sole power to impeach. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the senators elected.

(*Prouty v. Stover*, 11 K. 235; *State ex rel. v. Hillyer*, 2 K. 17, 18.)

(146) Same; punishment. § 28. The governor and all other officers under this constitution shall be subject to impeachment for any misdemeanor in office; but judgment in all such cases shall not be extended further than to removal from office, disqualification to hold any office of profit, honor or trust under this constitution; but the party, whether acquitted or convicted, shall be liable to indictment, trial, judgment and punishment, according to law.

ARTICLE 3.—JUDICIAL.

(150) Jurisdiction and terms. § 3. The supreme court shall have original jurisdiction in proceedings in *quo warranto*, *mandamus*, and *habeas corpus*; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government, and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

(*Foster v. Moore*, 32 K. 483; *Wilson v. Price* *Raid Aud. Com.*, 31 K. 257; *State v. City of Topeka*, 31 K. 452; *State ex rel. v. Wilson*, 30 K. 661; *City of Leavenworth v. Weaver*, 26 K. 392; *State v. Crosby*, 17 K. 396; *Shoemaker v. Brown*, 10 K. 383; *Ulrich v. Ulrich*, 8 K. 408; *McCulloch v. Dodge*, 8 K. 476; *Auditor of State v. A. T. & S. F. Rld. Co.*, 6 K. 500; *State v. Allen*, 5 K. 213; *State ex rel. v. Cobb*, 2 K. 32, 34.)

(164) Process. § 17. The style of all process shall be "The State of Kansas," and all prosecutions shall be carried on in the name of the state.

(*Neitzel v. City of Concordia*, 14 K. 448; *City of Emporia v. Volmer*, 12 K. 628; *Truitt v. Baird*, 12 K. 422; *State v. Comm'rs*, 11 K. 71; *State v. Jefferson Co.*, 11 K. 66.)

ARTICLE 5.—SUFFRAGE.

(171) Who not qualified. § 2. No person under guardianship, *non compos mentis*, or insane; no person convicted of

felony, unless restored to civil rights; no person who has been dishonorably discharged from the service of the United States, unless reinstated; no person guilty of defrauding the government of the United States, or any of the states thereof; no person guilty of giving or receiving a bribe, or offering to give or receive a bribe; and no person who has ever voluntarily borne arms against the government of the United States, or in any manner voluntarily aided or abetted in the attempted overthrow of said government, except all persons who have been honorably discharged from the military service of the United States since the first day of April, A. D. 1861, provided that they have served one year or more therein, shall be qualified to vote or hold office in this state, until such disability shall be removed by a law passed by a vote of two-thirds of all the members of both branches of the legislature.

This section was submitted by the legislature at the session of 1867, Senate Journal 1867, p. 550 (it is not printed in Session Laws of 1867), and was adopted by the people at the election held November 5th, 1867. Original section 2 was as follows: "§ 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote; nor any person convicted of treason or felony, unless restored to civil rights."

(Privett v. Bickford, 26 K. 52; Privett v. Stevens, 25 K. 275; Wright v. Noell, 16 K. 601, 606.)

(172) Citizens in the military service and absent.

§ 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas, nor while a student in any seminary of learning, nor while kept at any almshouse or other asylum at public expense, nor while confined in any public prison; and the legislature may make provision for taking the votes of electors who may be absent from their townships or wards, in the volunteer military service of the United States, or the militia service of this state; but nothing herein contained shall be deemed to allow any soldier, seaman or marine in the regular army or navy of the United States the right to vote.

This section was submitted by the legislature at the session of 1864 (Laws 1864, ch. 45),

and was adopted by the people at the general election held November 8, 1864. Original section 3 was as follows: "§3. No soldier, seaman or marine in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the state in consequence of being stationed within the same; nor shall any soldier, seaman or marine have the right to vote."

(Hunt v. Richards, 4 K. 549.)

(174) Duelists. § 5. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or shall go out of the state to fight a duel, shall be ineligible to any office of trust or profit.

(175) Bribery. § 6. Every person who shall have given or offered a bribe to procure his election shall be disqualified from holding office during the term for which he may have been elected.

(176) Electors privileged. § 7. Electors, during their attendance at election, and in going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, or breach of the peace.

ARTICLE 6.—EDUCATION.

(182) Money applied to schools. § 6. All money which shall be paid by persons as an equivalent for exemption from military duty; the clear proceeds of estrays, ownership of which shall vest in the taker-up; and the proceeds of fines for any breach of the penal laws, shall be exclusively applied in the several counties in which the money is paid or fines collected, to the support of common schools.

(A. T. & S. F. Rld. Co. v. State, 22 K. 1.)

ARTICLE 7.—PUBLIC INSTITUTIONS.

(187) Penitentiary. § 2. A penitentiary shall be established, the directors of which shall be appointed or elected, as prescribed by law.

(Millar v. State, 2 K. 169, 174; Wheeler v. Brady, 15 K. 81.)

ARTICLE 15.—MISCELLANEOUS.

(229) Lotteries. § 3. Lotteries and the sale of lottery tickets are forever prohibited.

(236) Prohibition. § 10. The manufacture and sale of in-

toxicating liquors shall be forever prohibited in this state, except for medicinal, scientific and mechanical purposes.

The foregoing amendment was submitted by the legislature at the session of 1879, and was adopted by the people at the general election held November 2, 1880.

(State v. Fleming, 32 K. 588; Foster v. State, 32 K. 765; Const. Prohib. Amend. Cases, 24 K. 700.)

SCHEDULE.

(238) Penalties, bonds, etc. § 2. All fines, penalties and forfeitures, owing to the territory of Kansas, or any county, shall inure to the use of the state or county. All bonds executed to the territory, or any officer thereof, in his official capacity, shall pass over to the governor, or other officers of the state or county, and their successors in office, for the use of the state or county, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

CHAPTER 2.—AGRICULTURE.

(281) Laws and regulations. § 4. All county agricultural and horticultural societies, duly incorporated under the laws of this state, shall have power, during the time of holding their fairs, to appoint such police force and make such laws and regulations as shall be deemed necessary for the well ordering and government of the society. [Laws 1872, ch. 38, § 1, June 20.]

CHAPTER 5A.—ARBITRATION AND AWARD.

(321) Bonds. § 3. That said arbitration bonds shall specify some certain time and place at which said arbitration shall be held, allowing said arbitrators or umpire liberty to adjourn from time to time until an award or umpirage be made; some certain time being specified in said bonds at which said award or umpirage be made up. [Laws 1876, ch. 102, § 3, May 1.]

(Weir v. West, 27 K. 650.)

(322) Legal process. § 4. That the parties shall have the

benefit of legal process to compel the attendance of witnesses ; which process shall be issued by the clerk of the district court, or by any justice of the peace for any county in which said arbitration shall be held, and shall be returnable before the umpire or arbitrators on a day and place certain named therein. [Laws 1876, ch. 102, § 4, May 1.]

(323) Disobeying process. § 5. That any person disobeying such process, after being duly served therewith, shall be deemed guilty of contempt of the court from which such process issued ; and on complaint made by the party injured to the district court whose clerk issued such process, or to the justice, as the case may be, such court or justice may subject the person disobeying such process to the same penalties and forfeitures and in the same manner as such court or justice is authorized to inflict upon persons disobeying writs of subpoena in other cases. [Laws 1876, ch. 102, § 5, May 1.]

(328) Contempt; Punishment. § 10. That so far as said award or umpirage directs the performance of any act or thing other than the payment of money, the party disobeying the same shall be liable to be punished as for a contempt of court, either by attachment or execution, as the nature of the case may require. [Laws 1876, ch. 102, § 10, May 1.]

CHAPTER 11.—ATTORNEYS AT LAW.

(393) Deceit or collusion. § 6. An attorney or counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or a party to an action or proceeding, or brings suit or commences proceedings without authority therefor, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action. [G. S. 1868, ch. 11, § 6, Oct. 31.]

(Peyton's Appeal, 12 K. 406.)

(397) License revoked or suspended. § 10. The supreme and district courts may respectively revoke or suspend the license

of any attorney or counselor at law to practice therein; and a revocation or suspension by the district court in one county, operates to the same extent in the courts of all other counties. [G. S. 1868, ch. 11, § 10, Oct. 31.]

(*Farlin v. Sook*, 30 K. 401.)

(398) Causes for. § 11. The following are sufficient causes for such revocation or suspension: *First*, When he has been convicted of a felony or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is sufficient evidence. *Second*, When he is guilty of a willful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with, or in the course of his profession. *Third*, Neglecting or refusing, on demand, to pay over money in his hands, due or belonging to a client. *Fourth*, Destroying, secreting, fraudulently withdrawing, mutilating, or altering any paper or record belonging to the files or records in any action or proceeding. *Fifth*, For the willful violation of any of the duties of an attorney or counselor. [G. S. 1868, ch. 11, § 11, Oct. 31.]

(*In re Pryor*, 18 K. 72.)

(399) Proceedings. § 12. The proceeding to remove or suspend an attorney may be commenced by the direction of the court, or on motion of any person interested. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it. [G. S. 1868, ch. 11, § 12, Oct. 31.]

(400) Order to appear. § 13. If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer, on a day therein fixed, either at the same or subsequent term, and shall cause a copy of the accusation and order to be served upon him personally. [G. S. 1868, ch. 11, § 13, Oct. 31.]

(401) Pleading and trial. § 14. To the accusation he may plead or demur, and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed and preserved. [G. S. 1868, ch. 11, § 14, Oct. 31.]

(402) Judgment. § 15. If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires. [G. S. 1868, ch. 11, § 15, Oct. 31.]

(Peyton's Appeal, 19 K. 398.)

(403) Appeal; acquittal final. § 16. In case of a removal or suspension being ordered by a district court, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the docket entries, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal in the district court is final. [G. S. 1868, ch. 11, § 16, Oct. 31.]

(Bird v. Gilbert, 40 K. 469.)

(404) Refusal to pay or deliver money, etc. § 17. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor. [G. S. 1868, ch. 11, § 17, Oct. 31.]

(Cummins v. Heald, 24 K. 600; Voss v. Bachop, 5 K. 59.)

(405) Not liable. § 18. Where the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section, until the person demanding the money proffers sufficient security for payment of the amount of the attorney's claim when it is legally ascertained. [G. S. 1868, ch. 11, § 18, Oct. 31.]

(Voss v. Bachop, 5 K. 59, 60.)

CHAPTER 12A.—BONDS.

AN ACT to authorize counties, incorporated cities and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water power, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith.

[Took effect March 7, 1872.]

(434) Unlawfully issuing bonds a felony. § 28. If any person or officer whose duty it is under the provisions of this act to issue or assist in any manner in the issuance of the

bonds of any county, city or township, shall prepare, sign or deliver, or aid, counsel or assist in preparing, signing or delivering, or shall cause to be prepared, signed or delivered, any bond or bonds of any county, city or township, at any time before such bond or bonds are authorized by this act to be prepared, signed or delivered, such person or officer shall be guilty of a felony, and upon conviction shall be fined in a sum of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the penitentiary for not less than one year and not longer than twenty years, or by both such fine and imprisonment. [Laws 1874, ch. 38, § 15, March 18.]

AN ACT to enable counties, municipal corporations, the boards of education of any city, and school districts, to refund their indebtedness.

(469) Levy of taxes to pay. § 51. In every instance in which any county, city, township, the board of education of any city, or any school district, shall issue bonds under this act, it shall be the imperative duty of the proper officers of such county, city, township, the board of education of any city, or of such school district, whose duty it may be to levy taxes, to annually levy, at the time of making the levy of other taxes, a tax sufficient in amount to pay the interest upon said bonds and the coupons as they become due, and to create a sinking fund as provided for in this act for the payment of the principal of such bonds; and if such officers fail or neglect to make such levy, it shall be the duty of the county clerk forthwith to levy such tax; and in case any such officer shall neglect or refuse to levy any such tax at the time aforesaid, and in case any county clerk shall neglect or refuse to extend such tax upon the tax roll of the county at the proper time, then, and in that case, any such officer so neglecting or refusing to levy or extend such tax shall be severally and individually liable, and shall also be liable upon his official bond to the holder of any such bond or coupon falling due during the year for which such tax should have been levied or extended for the full amount thereof as soon as the same is due, which liability may be enforced in a civil action in

the name of such holder; and any such officer so neglecting or refusing to levy or extend such tax shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in an amount equal to the amount which it may be shown should have been so levied or extended during such year, or imprisoned in the county jail for a term not less than three nor more than twelve months. [Laws 1879, ch. 50, § 6, March 10.]

(470) Duty of auditor; treasurer to make levy; penalty. § 52. Should the proper officers whose duty it is to levy the taxes to pay such bonds and coupons, fail or neglect to make such levy as provided for in this act, it shall be the duty of the auditor of state, at any time thereafter, to ascertain the amount of interest and sinking fund, or principal of such bonds, accrued and to accrue during that year, and shall certify the amount thereof to the treasurer of the county in which such bonds were issued, setting forth the amount thus due, and whether from the county or from a particular city, township, the board of education of any city or school district within such county; and it shall be the duty of such county treasurer, immediately upon receiving such certified statement from the auditor of state, to proceed to ascertain from the assessment roll of the county the amount of taxable property in such county, city, township, the board of education of any city, or such school district, and what percentage is required to be levied thereon to pay the said interest and sinking fund or principal, and when so ascertained shall levy such percentage upon the taxable property of such county, city, township, the board of education of any city, or such school district, as may be liable thereto, and shall immediately place the same upon the tax roll of the county in a separate column or columns, designating the purpose for which said taxes are levied; and the said taxes shall be collected by the county treasurer of such county in the same manner that other taxes are collected. And should such county treasurer neglect or refuse to levy such tax and place the same upon the tax roll for collection as herein provided, he shall be personally liable,

and also liable upon his official bond to the holder of any such bonds or coupons then due, for the full amount thereof, and shall also be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for not less than three nor more than twelve months. [Laws 1879, ch. 50, § 7, March 10.]

(473) Punishment for wrong use. Any person who shall appropriate, use, or aid or abet in appropriating, using, any of the funds or moneys mentioned in this act, for any other purpose than as in this act provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum equal to the amount of money so appropriated or used, and imprisoned in the county jail for not less than three nor more than twelve months, and shall also be liable in a civil action for the amount so misappropriated or used, to be prosecuted by any such bondholder or other party entitled thereto. [Laws 1879, ch. 50, § 10, March 10.]

CHAPTER 16.—BRIDGES.

ARTICLE 2.—BRIDGES IN CERTAIN COUNTIES.

AN ACT to provide for building and repairing bridges in counties having twenty thousand inhabitants or more, and in the counties of Davis, Barton, Washington, Dickinson, Linn, and Greenwood.

[Took effect March 14, 1879.]

(529) Penalty. § 29. Any officer or person who shall violate any of the provisions of this act, or who shall fail or neglect to perform his duties as required by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace in said county shall be fined in a sum not less than five or more than fifty dollars, and shall forfeit his office. And it shall be a part of the judgment of the said justice of the peace before whom the case is tried, on such conviction, that such officer or person be removed from office, and that he stand committed to the county jail until the fine and the

costs of prosecution are paid. The fine so collected shall be paid into the bridge fund. Any freeholder may make the complaint, and it shall be the duty of the county attorney to prosecute the same. [Laws 1879, ch. 77, § 13, March 14.]

CHAPTER 17.—CENSUS.

AN ACT defining duties of county clerks, and township and city assessors.

[Took effect March 15, 1873.]

(535) Schedules, contain what. § 5. The instructions mentioned in the last section shall require schedules properly classified, and among other things shall contain the following:

POPULATION.—The name, age, sex and color of each person; place of birth, and where from to Kansas; number of families, and number of persons in each family.

OCCUPATIONS.—Population, ten years and over, engaged in [all] occupations; engaged in agriculture; engaged in professional services; engaged in trade and transportation; engaged in manufactures and mechanical industries; engaged in mining; number of persons learning trades; native and foreign, under twenty-one years of age.

AGRICULTURE.—Name of person managing farm; size of farm; quantity of land under cultivation; quantity of land under fence; quantity of land not under fence; acreage of the principal crops; number of rods of the different kinds of fence, and the cost of each; value of farm; value of farming implements; number of the different kinds of live stock; number and value of slaughtered animals.

MANUFACTURES.—Number of establishments; name of business; kind of motive power; average number of hands employed; capital invested; raw material used; product.

THE BLIND, DEAF AND DUMB, INSANE, AND IDIOTIC.—The number of blind, deaf and dumb, insane, and idiotic; giving age, sex and color of each, together with name and post-office address of the parents or guardians.

LIBRARIES, NEWSPAPERS, CHURCHES, AND SCHOOL HOUSES.—The number of public libraries, number of volumes in; number of private libraries, number of volumes in; number of newspapers, when established, and circulation; number of church organizations of each denomination, membership, number of church edifices, and value of church property; number of school houses, and value of school property.

PAUPERISM AND CRIME.—Number of persons supported in whole or in part at public expense during the year; cost of annual support; number of persons convicted of any criminal offense before the district court, justices' courts and police courts, specifying the offense by classes, during the year, and number of persons in prison or in the county jail on the first day of March, eighteen hundred and seventy-five. [Laws 1875, ch. 67, § 3, March 10.]

(541) Penalty for neglect. § 11. Any assessor who shall willfully neglect or refuse in whole or in part to perform the duties required in this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than twenty dollars nor more than one hundred dollars. [Laws 1875, ch. 67, § 9, March 10.]

CHAPTER 18.—CITIES OF THE FIRST CLASS.

AN ACT to incorporate and regulate cities of the first class, and to repeal all prior acts relating thereto.

[Took effect March 6, 1881.]

ARTICLE 3.—GENERAL POWERS OF THE MAYOR AND COUNCIL.

(555) Powers of mayor and council. § 11. The mayor and council shall have the care, management and control of the city and its property and finances; and shall have power to enact ordinances for the purposes hereinafter named, not repugnant to the constitution and laws of this state, and such ordinances to alter, modify and repeal; and shall have power—

First. To levy and collect taxes upon all the real, mixed and

personal property within the limits of said city taxable according to the laws of this state, the valuation of such property to be taken from the assessment rolls in the county clerk's office: For general revenue purposes, not to exceed six mills on the dollar in any one year; for general improvements, excepting sewerage and improvements for which special assessments are levied, not to exceed six mills on the dollar in any one year.

Second. To levy and collect, annually, taxes on all the taxable property within the city, in addition to other taxes, in a sufficient amount, for the purpose of paying the interest coupons as they become due on all bonds of the city now issued, or hereafter to be issued by the city, which tax shall be payable only in cash.

Third. To levy and collect a license tax upon and regulate any and all callings, trades, professions and occupations conducted, pursued, carried on or operated within the limits of such city, including auctioneers, artists, agents (including insurance, real estate, loan and mercantile agents), book or map agents or canvassers, boarding houses, billiard tables, bridge companies and bridge corporations, bankers, banking houses or corporations, bowling alleys, corporations, contractors, clothing-house runners, commission merchants, concerts, cattle dealers, coal yards, dealers in coal, wood, and grain; keepers of bucket shops, option dealers, corn doctors, circuses, doctors, dentists, druggists, express companies and agencies, exhibitions for pay, fortune tellers, gaugers, gift enterprises, hotels, hotel runners or solicitors, horse dealers, hackney or livery carriages, horoscopic views, inn keepers, inspectors, insurance companies (including accident, fire, life or marine insurance companies), ice dealers, intelligence offices, livery-stable keepers, lung testers, lawyers, merchants, museums, menageries, muscle testers or developers, magnifying glasses, newspaper and publishing houses, omnibuses, public buildings, halls and grounds, peddlers, pawnbrokers, photographers, porters, public lecturers for pay, physicians and surgeons, patent-right dealers, public masquerades, public hall and street

exhibitions, pistol or shooting galleries, private hospitals, retailers, railroad and railroad companies (including street or horse railroads), shows, stock yards, theaters and theatrical exhibitions, taverns, ten-pin alleys (without regard to the number of pins used), telegraph and telephone companies, wood yards, wagon yards, and all wagons and other vehicles transporting merchandise or passengers for pay, skating rinks, roller coasters, scavengers, plumbers, sewer and drain layers, and any and all other businesses, trades, avocations or professions, whatever, not above mentioned.

Fourth. To authorize the proper officers of the city to grant and issue licenses, and to direct the manner of issuing and directing the same. All license taxes shall be regulated by ordinance, and no license shall be issued for a longer time than one year.

Fifth. To have exclusive power to license ferries and to regulate the same and the landing thereof, within the limits of said city.

Sixth. To fix the rate of carriage of persons and drayage, cartage and transportation of property other than by railroads operated by steam.

Seventh. To adopt all such measures as they may deem necessary for the protection of strangers and the traveling public, in person or property.

Eighth. To appropriate private property to the use of the city, as herein provided.

Ninth. To make regulations to prevent the introduction and spread of contagious diseases into the city; to make quarantine laws for that purpose, and to enforce the same within five miles of the city.

Tenth. To erect, establish and regulate hospitals, work-houses, houses of correction, pest-houses, and provide for the government and support of the same.

Eleventh. To make regulations to secure the general health of the city; to prevent and remove nuisances; to regulate or

prohibit the construction of privy vaults and cesspools, and to regulate or suppress those already constructed; to compel and regulate the connection of all property with sewers; to suppress hog pens, slaughter-houses and stock yards, or to regulate the same and prescribe and enforce regulations for cleaning and keeping the same in order; and the cleaning and keeping in order of warehouses, stables, alleys, yards, private ways, out-houses, and other places where offensive matter is kept or permitted to accumulate, and to compel and regulate the removal of garbage and filth beyond the limits of the city.

Twelfth. To establish, regulate and support night watch and police, and to define the duties thereof.

Thirteenth. To provide for the lighting of streets and the erection of lamp posts.

Fourteenth. To regulate and maintain market-houses heretofore erected, to maintain and regulate market-places; and to maintain any library for public use that may have been heretofore used or supported by the city for the public benefit, and to regulate the entrances to public halls, churches and buildings, and the way of ingress to and egress therefrom.

Fifteenth. To compel owners of property adjacent to walks and ways, where dangerous, to erect and maintain railings, safeguards and barriers along the same.

Sixteenth. To provide for the prevention or extinguishment of fires, and to organize and establish fire, hook-and-ladder companies; provide for a fire department, and to regulate the same; to establish fire limits; to regulate, restrain or prohibit the erection of wooden buildings within such limits as may be prescribed by ordinance, and to provide for the removal of the same at the expense of the owner thereof when erected contrary to the ordinances of the city; to regulate and prevent the storing of green hides, and the carrying on of manufactures dangerous in causing or producing fires, injurious to health, or obnoxious or offensive to the inhabitants of said city; to appoint a fire marshal, with power to remove and keep away from

the vicinity of any fire all idle and suspicious persons lurking near the same, and to compel any person or persons present to aid in the extinguishment of such fire, or the preservation of property exposed to the danger of the same, and in preventing goods from being purloined thereat, and with such powers and duties as may be prescribed by ordinance: *Provided*, No wooden buildings may be erected in fire limits once fixed, nor any frame additions made to any existing building.

Seventeenth. To regulate and order the cleaning of chimneys.

Eighteenth. To regulate the storage of powder, pitch, turpentine, resin, hemp, baled hay, cotton, and all other combustible or inflammable materials, and the storing of lumber in yards or on lots within the fire limits of the city, or as they may be prescribed by ordinance, and the use of lights and candles in stables, shops and other places; to remove or prevent the construction of any fireplace, chimney, stove, oven, boiler, kettle, or any apparatus used in any house, building, manufactory, or business which may be dangerous in causing or producing fires; to direct the safe construction of deposits for ashes; and to enter into and examine all dwelling-houses, lots, yards, inclosures, and buildings of every description, and other places, in order to ascertain whether any of them are in a dangerous state; and to take down or remove buildings, walls and superstructures that may become insecure or dangerous, and to require the owner of insecure and dangerous buildings, walls and other erections to remove or render the same secure and safe at the cost of the owner or owners of such property.

Nineteenth. To regulate and prescribe the manner and order the building of partition and parapet and fire-walls and partition fences, and to regulate and prescribe the construction and building of chimneys, smoke, hot-air flues, and smoke stacks.

Twentieth. To regulate parks, public grounds, depots, depot grounds, and places of storage of freight and goods within the limits of the city, and to provide for and regulate the construction and passage of railways and street railroads through the

streets, avenues, alleys or lanes and public grounds of the city : *Provided*, That no person or company to whom the right and privilege shall at any time be granted by the mayor and council of such city to construct railroads and street railroads through the city, shall have the exclusive privilege to use any streets for that purpose.

Twenty-first. To regulate the crossings of railway and street railway tracks, and provide precautions and prescribe rules regulating the same, and to regulate the running of street railroads or cars, and railway engines, cars and trucks within the limits of said city, and to prescribe rules relating thereto, and govern the speed thereof, and to make any other and further provisions, rules and regulations to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines, and to require such railroad companies to erect viaducts over their railroad tracks at the crossings of streets.

Twenty-fourth. To provide by ordinance for the punishment of all persons who may in any way wrongfully interfere with or obstruct, injure or destroy any railway tracks, cars or engines, trucks, or loiter around or about the same, or injure any pipe or pipes, lamp posts, lamps, hydrants, or any instrument or fixture used in connection with the same, or who may unlawfully cause the waste of or appropriate any of the gas, water, steam or hot air conveyed by or through such pipe or pipes.

Twenty-fifth. To prevent or regulate the running at large of cattle, hogs, horses, mules, asses, fowls, sheep, goats, dogs, and all other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such regulations and the expense of impounding and keeping the same, and of such sale ; and to regulate and provide for the taxing of owners and harborers of dogs, and to destroy dogs running at large contrary to any ordinance regulating the same.

Twenty-sixth. To provide for the erection of all needful pens, pounds and buildings for the use of the city, within and without

the city limits, and to appoint and confirm keepers thereof, and to establish and enforce rules governing the same.

Twenty-seventh. To require and regulate the planting and protection of shade trees in the streets and on the public grounds of the city, the building of bulkheads, cellar- and basement-ways, stairways, railings, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and to regulate or prohibit awnings, awning posts, and all other structures projecting upon or over or adjoining the street or sidewalk, and all excavations through and under the sidewalks of the city: *Provided*, That no person or corporation that now has or may hereafter acquire the right to use the streets, avenues or alleys of the city for laying gas, steam or water pipes, or conduits for the transmission of light, heat or power, or for any other purpose, make an excavation on any street, avenue or alley of said city that has been paved, except in conformity to the regulations and rules established by the mayor and council by ordinance.

Twenty-eighth. To prohibit and suppress the tippling-shops, saloons, dramshops, club-rooms, to restrain, prohibit and suppress slaughter-houses, houses of prostitution, disreputable houses, games and gambling-houses, dance-houses, keno rooms, desecration of the Sabbath day, and all kinds of indecency and other disorderly practices, disturbance of the peace, assault and battery, and petit larceny, and to provide for the punishment thereof.

Twenty-ninth. The council may prescribe rules for the weighing and measuring of every commodity sold in the city, in all cases not otherwise provided for by law, and may provide for the inspection of grain and weighing of hay, grain and coal, the measuring of wood and fuel, and determine the place or places of the same, and regulate and prescribe the place or places of exposing for sale hay, coal and wood, and fix the fees and duties of the persons authorized to perform the duties named in this section; and to provide for the inspection and condemnation of coal oil, gasoline, naphtha, and all other inflammable and com-

bustible oils, fluids or gases used for heating or lighting purposes, when the same shall not be of the quality and standard prescribed by the law or by ordinance.

Thirtieth. To provide for the government and regulation of markets, market-places and meat shops, and to collect a license tax therefrom and determine the amount of license to be paid therefor.

Thirty-first. The mayor and council shall have the right to establish, alter and change the channels of streams and water courses, and to bridge the same: *Provided*, That any such improvement mentioned in this subdivision, costing in the aggregate a sum greater than two thousand dollars, shall not be authorized until the ordinance providing therefor shall be submitted to and ratified by a majority of the legal voters of the city.

Thirty-second. To provide that any person desiring to subdivide any tract of land within the city limits shall submit a plat and map of such subdivision, and a correct abstract of title of the land platted, to the mayor and city council, to be approved by said mayor and council, before the same shall be filed in the office of the register of deeds of the county in which said land is located: *Provided*, That the person or persons so desiring to subdivide his or their tract of land shall not, in the dedication of the streets and alleys or public grounds of said subdivisions for public use, reserve to themselves, their heirs or assigns, the right to quarry or dig any rock, coal or other mineral, or make any reservations whatever in, any streets, alleys, or public grounds.

Thirty-third. To make all needful police regulations necessary for the preservation, good order and peace of the city, and to prevent injury to or destruction or interference with public or private property.

Thirty-fourth. Each city shall constitute a separate road district; and the mayor and council are authorized and empowered to compel each male resident of said city, between the

ages of twenty-one and forty-five years, to perform two days' labor of ten hours each on the streets, alleys or avenues of the said city, or in lieu thereof, pay to the street commissioner the sum of three dollars. The city clerk shall make out and certify to the street commissioner and city treasurer, on or before the first day of April of each year, duplicate lists of persons registered by him as voters, between the ages of twenty-one and forty-five years, and the street commissioner shall collect the sum of three dollars from each person so certified by the clerk, or compel each person to perform personally two days' labor on the streets, alleys or avenues of said city. The street commissioner shall, every forty-eight hours, turn over to the city treasurer all moneys collected by him during said time, together with a list of the persons from whom said money was collected, and shall, once every week, make out and deliver to the city treasurer a list of all persons who have performed their two days' labor on the streets. The city treasurer shall place the money collected by the street commissioner in the general improvement fund. All work or labor done under the provisions of this section shall be under the superintendence of the street commissioner. Each city shall have power to pass all ordinances, and to enforce the same by fine, imprisonment, or both, necessary to carry out fully the provisions of this section.

Thirty-fifth. To provide for the election of city officers, and prescribe the manner of conducting the same, and the returns thereof, and for deciding contested elections, in any manner not in conflict with the laws of the state.

Thirty-sixth. To provide for removing officers of the city for misconduct.

Thirty-seventh. To regulate the police of the city, and to impose fines, forfeitures and penalties for the breach of any ordinance, and to provide for the recovery and collection thereof, and in default of payment, to provide for confinement in the city prison or to hard labor.

(State v. Young, 3 K. 445; The State *ex rel.* v. The City of Topeka, 31 K. 452; State v. City of Leavenworth, 36 K. 314; State *ex rel.* v. Wilson, 30 K. 661; Cor-

lett v. City of Leavenworth, 27 K. 678; City of Leavenworth v. Weaver, 26 K. 392; City of Leavenworth v. Booth, 15 K. 627; City of Leavenworth v. Booth, 15 K. 636; Langan v. City of Atchison, 35 K. 318; Street Railway Co. v. Nave, 38 K. 744; C. B. U. P. Rld. Co. v. Andrews, 37 K. 162; C. B. U. P. Rld. Co. v. Andrews, 30 K. 590; State v. City of Topeka, 36 K. 76; Rice v. State, 3 K. 141; City of Topeka v. Myers, 34 K. 500; *In re Dassler*, 35 K. 678; City of Salina v. Seltz, 16 K. 143; State v. Wilson, 30 K. 672.)

(571) Firearms; vagrants. § 23. The council shall prohibit and punish the carrying of firearms or other dangerous or deadly weapons, concealed or otherwise, and cause to be arrested and imprisoned, fined or set to work, all vagrants, tramps, confidence men and persons found in said city without visible means of support, or some legitimate business. [Laws 1881, ch. 37, § 23, March 6.]

(574) Sidewalks, etc., to be kept in good order. § 26. The mayor and council shall have power to prescribe by ordinance, rules and regulations compelling owners or occupants of real property to keep in good order and proper place any of the improvements of any sidewalk, gutters, and also to clean or remove from sidewalks and gutters ice, snow, or other substances. Such rules and regulations shall be deemed police regulations, and violations thereof may be punished accordingly by fine or imprisonment. [Laws 1881, ch. 37, § 26, March 6.]

(599) Enforce laws and ordinances. § 47. The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty. He shall have such jurisdiction as may be vested in him by ordinance over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance or regulation thereof. [Laws 1881, ch. 37, § 47, March 6.]

(595) Special policemen. § 43. He shall be a conservator of the peace throughout the city, and shall at all times have power to appoint such number of special policemen as he may in cases of emergency deem necessary to preserve the peace of the city, and to dismiss the same at pleasure: *Provided*, Such

policemen shall not serve longer than the next meeting of the council, unless confirmed by them. [Laws 1881, ch. 37, § 43, March 6.]

(602) Remit fines and grant pardons. § 50. The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinances of the city, by and with the consent of the council, and not otherwise. [Laws 1881, ch. 37, § 50, March 6.]

ARTICLE 5.—POLICE JUDGE.

(603) Jurisdiction. § 51. The police judge shall have exclusive original jurisdiction to hear and determine all cases for offenses against the ordinances of the city. [Laws 1881, ch. 37, § 51, as amended by Laws 1885, ch. 98, § 1, May 1.]

(604) Issue warrants, when. § 52. Whenever complaint shall be made to the police judge, upon the oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police judge has jurisdiction, the police judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the city marshal, or any policeman, or the sheriff of the county, or some person specially appointed by the police judge for that purpose; and such warrant may be executed in any part of the state. [Laws 1881, ch. 37, § 52, March 6.]

(605) Duty. § 53. When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant. [Laws 1881, ch. 37, § 53, March 6.]

(606) May postpone trial. § 54. Upon good cause shown, the police judge may postpone the trial of the case to a day certain, not exceeding ten days at a time, without the consent of the accused, in which case he shall require the defendant to enter into recognizance, with sufficient security, conditioned that he will appear before such judge at the time and place appointed, then and there to answer the complaints alleged against him. [Laws 1881, ch. 37, § 54, March 6.]

(607) Process; witnesses. § 55. It shall be the duty of the police judge to subpoena all persons whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment if necessary; and all process issued to secure the attendance of witnesses may be served in any part of the county in which such city is located. And when a trial shall be continued by the police judge, he may verbally notify such witnesses as may be present at the continuance to attend before him, and testify in the cause set for trial, and such verbal notice shall be valid as a subpoena. [Laws 1881, ch. 37, § 55, as amended by Laws 1885, ch. 98, § 2, May 1.]

(608) Trial by jury. § 56. All trials before the police judge for misdemeanors arising under the laws of the state shall be by jury of the same number, and to be selected in the same manner as jurors in justices' courts in like cases, unless the defendant and prosecuting attorney, with the assent of the police judge, submit the trial to the police judge. Each jurymen shall receive fifty cents for each day's attendance, except as hereinafter provided. [Laws 1881, ch. 37, § 56, March 6.]

(609) Judgment. § 57. If the defendant is found guilty, the police judge shall declare the punishment and render judgment accordingly. It shall be part of the judgment that the defendant stand committed till the judgment be complied with. [Laws 1881, ch. 37, § 57, as amended by Laws 1885, ch. 98, § 3, May 1.]

(610) Challenges. § 58. In trials by a jury before the police judge, challenges shall be allowed in the same manner as in a justice's court. [Laws 1881, ch. 37, § 58, March 6.]

(611) Court open; duty. § 59. The police judge shall be conservator of the peace, and his court shall be open every day at the police court room, except Sunday, to hear and determine any and all cases cognizable before him, forthwith for trial, and he shall have power to bring parties before him for trial upon complaint duly made. [Laws 1881, ch. 37, § 59, as amended by Laws 1885, ch. 98, § 4, May 1.]

(612) Appeal. § 60. In all cases before the police judge an appeal may be taken by the defendant to the district court in and for the county in which said city is situated; but no appeal shall be allowed unless such defendant shall within ten days after such conviction enter into recognizance, with sufficient security, to be approved by the judge, conditioned for his appearance at the district court of the county, at the next term thereof, to answer the complaint against him, and for the payment of the fine and costs of appeal, if it should be determined against the appellant. [Laws 1881, ch. 37, § 60, as amended by Laws 1885, ch. 98, § 5, May 1.]

(*In re Rolfs*, 30 K. 758.)

(613) Punishment. § 61. Any person convicted before the police judge of an offense under the ordinances of the city shall be punished by fine or imprisonment, or both, as may be regulated by ordinance. [Laws 1881, ch. 37, § 61, March 6.]

(614) Vacancy. § 62. In case of a vacancy in the office of police judge, by death, resignation or otherwise, or in case of his absence, interest, or inability to perform his duties, it shall be the duty of any justice of the peace of the township, who shall be designated by the mayor, to act as police judge during such vacancy, absence or disability, in the trial of causes cognizable before the said judge. [Laws 1881, ch. 37, § 62, March 6.]

(615) Complaint without cause. § 63. If upon any trial under the provisions of this act it shall appear to the satisfaction of the police judge that the complaint was made without probable cause, or from malicious motives, the judge trying the case shall state the name of the complainant in the finding, and shall impose the costs of the prosecution on him or them, and judgment shall be rendered against such complainant, that he or they pay such costs, and shall stand committed until the same are paid. [Laws 1881, ch. 37, § 63, as amended by Laws 1885, ch. 98, § 6, May 1.]

(616) Contempt. § 74. The police judge shall have the

power to enforce due obedience to all orders, rules, judgments and decrees made by him, and he may fine or imprison for contempt committed in his court, or of process issued by him, in the same manner and to the same extent as the district court. [Laws 1881, ch. 37, § 64, March 6.]

(617) Proceedings. § 65. In all cases not herein specifically provided for, the process and proceedings shall be governed by the laws regulating proceedings in justices' courts in criminal cases, except that no jury shall be allowed before police judge; and it shall be his duty to keep a complete record of his proceedings in each case, in like manner as justices of the peace in criminal cases. [Laws 1881, ch. 37, § 65, as amended by Laws 1885, ch. 98, § 7, May 1.]

(618) City attorney to prosecute. § 66. The city attorney shall by himself or deputy appear and prosecute all cases in the police court, of which such court has jurisdiction; but the expense of such deputy shall not be paid by the city. [Laws 1881, ch. 37, § 66, March 6.]

(619) Prosecutions. § 67. All prosecutions for violating any city ordinance shall be entitled, "The city of ——— against ———," (naming the city and the person or persons charged,) and the police judge shall state in his docket the name of the complainant, the nature or character of the offense, the date of the trial, the names of all witnesses sworn and examined, the finding of the court, the judgment or fine and costs, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in such case. The complaint, when made by the marshal, assistant marshal, or policeman, against any person arrested without process, and in custody, need not be in writing; but when the accused is not in custody, the complaint shall be in writing, and sworn to, before a warrant be issued for his arrest. In no case shall a judgment of conviction be rendered, except upon sufficient legal testimony, given on a public trial or upon plea of guilty made in open court. [Laws 1881, ch. 37, § 67, March 6.]

(620) Books and blanks. § 68. The city council shall furnish the police judge with a suitable docket and necessary blanks, and he shall deliver said docket and all books and papers pertaining to his office to his successor. [Laws 1881, ch. 37, § 68, March 6.]

(621) Forfeited recognizance. § 69. In case of breach of any recognizance entered into as aforesaid, the same shall be deemed and declared forfeited, and the city attorney shall forthwith cause the same to be prosecuted against the principal and surety, or the surety alone. Such actions shall be in the name of the city, as plaintiff, and may be prosecuted in the district court on the transcript of the proceedings before the police judge, and a copy of such recognizance, certified by the police judge; and all moneys recovered in any such action shall be paid over to the city treasurer, to the credit of the general revenue of the city. [Laws 1881, ch. 37, § 69, as amended by Laws 1885, ch. 98, § 8, May 1.]

(622) Report of judge. § 70. The police judge shall, within the first three days of each month, make out a list of all the cases heard or tried before him during the preceding month, giving in each case the name of the defendant, the fine imposed, if any, the amount of costs, (showing the amount taxed in favor of each officer,) the names of defendants committed, the causes appealed to the district court, and the amount collected by him as fine and costs, separately. Such judge shall verify such list and statement by affidavit, and file the same forthwith with the city clerk, who shall lay the same before the city council at their first session thereafter. The police judge shall, within twenty-four hours after the same is collected, pay over to the city treasurer the full amount of all fines collected by him during the preceding day. He shall take from the city treasurer duplicate receipts for the fines so paid, one of which he shall file with the city clerk. If the police judge shall thereafter collect any fines previously assessed and unpaid when said report was filed, he shall state such fact and the amount thereof in his next

daily and monthly report, and pay the same to the city treasurer, taking and filing receipts therefor as aforesaid. [Laws 1881, ch. 37, § 70, March 6.]

(623) Arrest. § 71. The city marshal or any policeman shall at all times have power to make or order an arrest upon view of an offense being committed, or upon reasonable suspicion that an offense has been committed, with or without process, for any offense against the laws of the state or of the ordinances of the city, and to bring the offender for trial before the proper officer of the city: *Provided*, That any person arrested for any offense, without process, shall be entitled, on demand before trial, to have filed a complaint on oath in writing; and such person shall not at that time be tried for any other offense than that for which he was arrested and for which the complaint shall be filed. [Laws 1881, ch. 37, § 71, as amended by Laws 1885, ch. 98, § 9, May 1.]

(624) Marshal subject to order of mayor. § 72. The marshal in the discharge of his duties shall be subject to the orders of the mayor only; the policemen in the discharge of their duties shall be subject to the orders of the mayor and marshal only; but any marshal, assistant marshal or any policeman may be removed or suspended by the mayor. [Laws 1881, ch. 37, § 72, March 6.]

(625) Power to arrest. § 73. The marshal or any policeman of the city shall have power to arrest all offenders against the laws of the state or of the city, by day or by night, and keep them in the city prison or other place, to prevent their escape, until a trial can be had before the proper officer. [Laws 1881, ch. 37, § 73, March 6.]

(626) No fees; proviso. § 74. No fees of any kind shall be allowed to any officer: *Provided*, That when the marshal or any policeman shall serve any process outside of the city he shall receive the mileage and fees usually allowed to constables for similar services, to be paid by the city upon a sworn item-

ized statement of the same being filed with the city clerk. [Laws 1881, ch. 37, § 74, March 6.]

(627) Bond of judge. § 74*a*. The police judge shall within ten days after his election, and before he enters upon the duties of his office, execute to the state of Kansas a bond in a sum fixed by the city council, with two or more sufficient sureties, approved by said city council and filed in the office of the city clerk, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office. [Laws 1885, ch. 98, § 10, May 1.]

(628) Repeal. § 74*b*. That the original sections numbers fifty-one, fifty-five, fifty-nine, sixty, sixty-three, sixty-five, sixty-nine and seventy-one of said chapter thirty-seven are hereby repealed. [Laws 1885, ch. 98, § 11, May 1.]

ARTICLE 6.—ELECTION OF OFFICERS, THEIR DUTIES AND
COMPENSATION.

(633) Officers appointed. § 79. The mayor, by and with the consent of the council, may appoint a city treasurer, city attorney, city clerk, city marshal, city engineer, fire marshal, city assessor, street commissioner, market-master, a weigh-master and inspector and weigher of grains, meats, flour, and other produce, policemen and detectives, and such other officers or servants as they may deem necessary for the best interests of the city. The term of any appointed officer shall be for a period of two years and until his successor is appointed and qualified. [Laws 1881, ch. 37, § 79, March 6.]

(638) Officers' duties. § 84. The mayor and council shall prescribe by ordinance the duties of any officer elected or appointed not herein provided for, and shall provide and suitably furnish offices for the mayor, clerk, attorney, engineer, marshal, and street commissioner. [Laws 1881, ch. 37, § 84, as amended by Laws 1883, ch. 34, § 5, March 7.]

(640) Marshal may suspend. § 86. The city marshal shall be chief of police, and shall have at all times power to suspend any assistant marshal or policeman until such suspension can be reported by the marshal to the mayor or acting mayor, which he must do within five days. The marshal shall, by himself or his deputy, attend all regular meetings of the council, and such special meetings as he shall have notice of. [Laws 1881, ch. 37, § 86, as amended by Laws 1883, ch. 34, § 6, March 7.]

(649) Marshal. § 95. The city marshal shall receive a salary of not more than twelve hundred dollars per annum. [Laws 1881, ch. 37, § 95, March 6.]

(650) Police judge. § 96. The police judge shall receive a salary of not more than seventy-five dollars per month; and the police of the city shall each receive a salary of not more than sixty dollars per month. [Laws 1881, ch. 37, § 96, March 6.]

(653) Unlawful to be pecuniarily interested in any contract. § 99. It shall be unlawful for the mayor or any member of the council, or any elected or appointed officer or servant of the city, to be a party to or interested pecuniarily in any contract, job or piece of work which may be let by the city; and any contract in which any such officer shall be pecuniarily interested shall be null and void; and in case any money shall have been paid on any such contract, it shall be the duty of the city attorney to sue for and recover the amount so paid in the name of the city from the parties to such contract, and from the councilman or other officer pecuniarily interested in the same; and if any such officer while in office shall become pecuniarily interested, directly or indirectly, in any contract or agreement in which the city shall be interested, or in any questions submitted, or proceedings upon which such officer may be called upon to vote or act officially, with intent to gain, directly or indirectly, pecuniarily, any benefit, profit, or pecuniary advantage, he shall be removed from office, and on conviction shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or imprisonment in the county

jail not exceeding one year, or by both such fine and imprisonment. [Laws 1881, ch. 37, § 99, March 6.]

(*State ex rel. v. Wilson*, 30 K. 661, 668.)

ARTICLE 7.—MISCELLANEOUS.

(655) Fine. § 101. All fines, penalties, fees and forfeitures collected for offenses against the ordinances of the city shall be paid into the treasury for the general revenue fund of the city. [Laws 1881, ch. 37, § 101, March 6.]

(658) Penalty for violation of act. § 104. If any officer shall violate any of the foregoing provisions of this act, or if any member of the council shall vote for any other or further allowance or salary to any officer whose salary is fixed by this act, or to the members of the council, or shall vote for allowing any claim or demand against the city, contrary to the provisions of this act, he shall be deemed guilty of a misdemeanor in office, and upon conviction thereof in a court of competent jurisdiction he shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year, and shall moreover be removed from office by the court rendering judgment of conviction against him. [Laws 1881, ch. 37, § 104, March 6.]

(*State ex rel. v. Wilson*, 30 K. 661.)

(659) Officers personally liable. § 105. The mayor and councilmen of any city governed by this act, and the officers, appointees or servants of any such city, shall be personally liable to such city for the proper performance of his or their duty, as prescribed by this act, or for the creation of any indebtedness contrary to the provisions of this act, and for the misapplication of any funds, things of value, or property of such city committed to his or their care, or subject to his or their disposal, by vote or otherwise; and it shall be the duty of the city attorney to prosecute all violations of this section, in the name and on behalf of said city, on the written request of any three citizens and taxpayers of said city. [Laws 1881, ch. 37, § 105, March 6.]

(662) Ordinances; publication. § 108. The style of all ordinances shall be: "Be it ordained by the mayor and councilmen of the city of ——" and all ordinances shall, as soon as practicable after they are passed, be published in some newspaper printed within the city, and no ordinance having any object beyond the bare appropriation of money shall be in force until published as herein provided. One publication in a newspaper of said city shall be sufficient, and the publisher thereof shall affix to every ordinance a line in brackets, stating correctly the date of such publication, thus: "[Published —, 188—,]" giving the month, day and year of the publication: *Provided, however,* That when the council of said city shall order a revision of the ordinances of said city, a publication in the book or pamphlet of ordinances shall be deemed a publication under this act: *Provided further,* That not less than fifty copies of such book or pamphlet shall be published. [Laws 1881, ch. 37, § 108, March 6.]

(663) How considered and passed. § 109. All ordinances of the city shall be read and considered by sections at a public meeting of the council, and the vote on their final passage shall be taken by yeas and nays, which shall be entered on the journal by the clerk, and no ordinance shall be valid unless a majority of all the members elect vote in favor thereof: *And provided,* That the council, in revising the ordinances of such city, shall have power to enact the same by a majority vote of all the members elect in favor thereof, pursuant to such rules and regulations as the council may provide: *And provided further,* That no ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no ordinance shall be revised or amended, unless the new ordinance contain the entire ordinance revised, or the section or sections amended; and the section or sections so amended shall be repealed. [Laws 1881, ch. 37, § 109, March 6.]

(664) Ordinance book; record. § 110. The city clerk shall keep an ordinance book, in which he shall enter at length,

in a plain and distinct handwriting, every ordinance hereafter enacted, immediately after its passage; and he shall append thereto a note stating the date of its passage and the page of the journal containing the record of the final vote on its passage, and also the name of the newspaper in which such ordinance was published, and the date of such publication. All ordinances of the city may be proved by the certificate of the clerk under the seal of the city, and when printed or published in pamphlet or book form, and purporting to be published by the authority of the city, shall be read and received in evidence in all courts and places without further proof. [Laws 1881, ch. 37, § 110, March 6.]

ARTICLE 10.—REGISTRATION OF VOTERS.

AN ACT to provide for and regulate the registration of voters in cities of the first and second class, and to repeal prior acts in relation thereto.

[Took effect March 14, 1879.]

(711) Penalty. § 159. If any officer shall neglect or refuse to perform any duty required by this act, or in the manner required by this act, or shall neglect or refuse to enter upon the performance of any such duty, or shall enter or cause or permit to be entered upon the registry books the name of any person in any other manner or at any other time than as prescribed by this act, or shall enter or cause or permit to be entered on such lists the name of any person not entitled to be entered thereon according to the provisions of this act, or shall destroy, secrete, mutilate, alter or change any such registry books, he shall upon conviction be punished by confinement and hard labor in the penitentiary not exceeding one year, and shall forfeit any office he may then hold. [Laws 1879, ch. 80, § 15, March 14.]

(712) Falsely personating another. § 160. If any person shall falsely personate another, and procure the person so personated to be registered, or if any person shall represent his name to the city clerk to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall upon conviction

be punished by confinement and hard labor in the penitentiary not exceeding one year. [Laws 1879, ch. 80, § 16, March 14.]

ARTICLE 12.—POLICE GOVERNMENT.

AN ACT providing for the police government of cities of the first class through a board of police commissioners, appointed by the executive council; and also for a similar government of cities of the second class in certain contingencies.

[Took effect March 2, 1887.]

(733) Police commissioners; term; salary. § 180. The governor of the state of Kansas, by and with the consent of the senate, shall appoint a board of police commissioners, to consist of three members, for each city of the first class in this state: *Provided*, That the governor shall refrain from making any such appointments in any of such cities if in his judgment such appointment is not necessary for the good government of the same. Such commissioners shall have been qualified electors and householders of such cities at least three years next prior to their appointment, and one of whom shall be of opposite politics from the other two. If the legislature is not in session at the time when such commissioners are appointed, they may, after having qualified as herein provided, enter upon the discharge of their duties as such commissioners. The official term of such commissioners shall expire on the first Tuesday of April of each odd-numbered year, but such commissioners or any one of them may be removed and the vacancies filled by the governor of the state of Kansas at any time; and at the regular session of the legislature next preceding the expiration of the official term of such commissioners the governor shall, by and with the consent of the senate, make a new appointment of the same or other commissioners for the next succeeding regular term of two years. Before entering upon their duties, such commissioners shall take and subscribe and cause to be filed in the office of the secretary of state an oath of office and for the faithful discharge of duty; and if any appointee shall for ten days after notification fail to cause such oath to be filed as aforesaid, his appointment shall be revoked and a new appointment shall be made by

the governor, who shall also have power to fill all vacancies in said board: *Provided*, That the mayor and councilmen of any city governed by the provisions of this act shall not be eligible to the office of police commissioner. One of said commissioners shall be designated by the governor to act as president and another one of them to act as secretary of the board. The annual salary of the commissioners shall be fixed by the executive council, but the same shall not be less than two hundred dollars nor more than three hundred dollars for each commissioner for a city of the second class, nor less than three hundred dollars nor more than four hundred dollars for each commissioner for a city of the first class; but the secretary may be allowed a sum not exceeding two hundred dollars in addition to his salary as a commissioner. Said salaries shall be paid out of the state treasury in like manner as the salaries of state officers. [Laws 1887, ch. 100, § 1, as amended by Laws 1889, ch. 181, § 1, March 13.]

(*State ex rel. v. Hunter*, 38 K. 578; *State ex rel. v. Hannon*, 38 K. 593.)

(734) Police judge; jurisdiction. § 181. The board of police commissioners shall immediately appoint a police judge, whose term of office shall expire on the second Tuesday of April of the next odd-numbered year following his appointment, when the new or reappointed board shall make a new appointment of the same or some other person as police judge for the next regular term of two years. The police judge appointed by the board shall have the exclusive and same power and authority, and shall exercise all the rights and perform all the duties under the laws of the state and the ordinances of such city, as the police judge of such city under existing laws. And in addition thereto the police judge appointed under this act shall have concurrent jurisdiction with justices of the peace of all offenses arising in the city under the laws of the state, and concurrent jurisdiction with justices of the peace of all offenses arising in the county under the laws of the state. The commissioners shall have the power to remove the police judge in the same manner as they

now can remove the marshal and police officers. [Laws 1887, ch. 100, § 2, as amended by Laws 1889, ch. 181, § 2, March 13.]

(735) Marshal and policemen. § 182. The board of police commissioners shall also immediately appoint a marshal, who shall be chief of police, subject to the orders of the board, and as many policemen as may be deemed necessary, not exceeding one for each fifteen hundred inhabitants. The marshal and policemen shall hold their respective offices until the second Tuesday of April next following their appointment, subject, however, to removal at any time by the unanimous vote of the board, or by a majority vote and thirty days' notice. The marshal and policemen so appointed shall have exclusive power, and it shall be their duty, to serve all process issued by the police judge, and all notices and papers issued by the board or any officer or member thereof. They shall also have and exercise all the common-law and statutory power of constables within the city, except for the service of civil process and all the powers now had and exercised by policemen under the laws of the state and the ordinances of such city. [Laws 1887, ch. 100, § 3, March 2.]

(736) Police commissioners; sessions; powers. § 183. The board shall keep and maintain an office at the council chamber, police-court room, or some station-house, and shall meet in regular session every Saturday evening, and in special session at any other time upon written request of any member to each other member who is in the city. Any regular session may be adjourned for a period not exceeding four days. Two members shall constitute a quorum at any regular or adjourned session, or at any special session properly called and notified. The concurrence of two members shall be sufficient to decide any question properly coming before the board. It shall be the duty of the board to fill all vacancies in the offices of police judge, marshal, and policemen. The board shall have the entire control of the police force of such city, its organization, government, and discipline, and entire control of all station-houses,

city prisons, patrol wagons, books, records, equipments, and all other property belonging to the police department, and shall audit all claims against said department and certify the same to the mayor and council for payment, when correct. It shall be the duty of the board to make general and special rules for its own government, and for the government and regulation of the police department, and to make and promulgate proper orders to the police force through the marshal. [Laws 1887, ch. 100, § 4, March 2.]

(737) Special police. § 184. The board may, on the application of any person or persons showing cause therefor, appoint any number of special policemen to do duty at any designated place or places in the city, at the expense of the person or persons by whom such applications shall be made; and the city shall not pay any such special policemen so appointed, and such special policemen shall not be required to do duty at any other than the designated place or places, but in all other respects they shall obey all rules and regulations of the board and all orders from the marshal. The board may also appoint such number of special policemen for general duty in the city as may be deemed advisable, not exceeding the number of the regular policemen; but such special policemen shall not serve longer than ten successive days without new appointments being made in like manner, and they shall not be paid at a rate exceeding that of the regular policemen, and shall be paid by the city as other policemen. [Laws 1887, ch. 100, § 5, as amended by Laws 1889, ch. 181, § 3, March 13.]

(738) Expenses, how paid. § 185. It shall be the duty of the mayor and council of any such city to pay, upon the requisition of the commissioners, for patrol wagon, horses, harness, and necessary supplies, and provide all necessary accommodations for the sessions of the board; and to provide a police-court room, station-houses and prisons, and to furnish, warm and light the same; to pay for food for prisoners; to provide for the monthly payment of the police judge and police officers, on the

certificate of the board as to the amount due each; also, for such office expenses, record books, stationery, printing, telegraphing, badges, clubs, and the repair and cleaning of police buildings as may be necessary—it being the true intent and meaning of this act that all the necessary expenses of the police department shall be borne by the city out of its general revenue fund, notwithstanding the government of such department is vested exclusively in said board. [Laws 1887, ch. 100, § 6, as amended by Laws 1889, ch. 181, § 4, March 13.]

(*State ex rel. v. Hannon*, 38 K. 593.)

(739) Government of police. § 186. Neither the mayor nor the council, nor any officer appointed by them, shall have any government of the police force; and the city treasurer shall not pay any of the police force, except upon the certificate of said board. Any person or persons who shall in any manner interfere with or interrupt said board, or the police judge, marshal or policeman so appointed, while in the legal performance of duty, shall, upon conviction thereof before the district court of the county wherein such city is located, be adjudged guilty of a misdemeanor, and shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or may be imprisoned in the county jail not less than ten days nor more than ninety days, for each offense. [Laws 1887, ch. 100, § 7, March 2.]

(740) Appointees to be electors. § 187. Every police judge, marshal and policeman appointed under this act shall be a qualified elector of such city, and before entering upon the discharge of his official duties shall take and subscribe, and cause to be filed with the board, an official oath and for the faithful discharge of duty. [Laws 1887, ch. 100, § 8, March 2.]

(741) Salaries. § 188. The annual salaries of the following-named officers shall be fixed by order of the board within the following limits, namely: In cities of the second class, the police judge not less than five hundred dollars and not more than seven hundred and twenty dollars; the marshal not less than five hun-

dred dollars nor more than seven hundred and twenty dollars; and the policemen each not less than three hundred and sixty dollars nor more than six hundred dollars. In cities of the first class having a population of more than forty thousand, the chief of police at a rate per annum not exceeding fifteen hundred dollars; one captain at a rate per annum not exceeding one thousand dollars; the police judge at a rate per annum not exceeding twelve hundred dollars; two sergeants for each police district at a rate not exceeding nine hundred dollars per annum; one jailer at the rate of sixty dollars per month; one sanitary sergeant at the rate of sixty-five dollars per month; one police surgeon at the rate of twenty-five dollars per month; one patrol-wagon driver at the rate of sixty dollars per month; patrolmen fifty dollars per month for the first six months, and sixty-five dollars per month thereafter. In cities of the first class having a population of less than forty thousand, the police judge not less than eight hundred dollars nor more than twelve hundred dollars; the marshal not less than eight hundred dollars nor more than twelve hundred dollars; and the policemen each not less than six hundred dollars nor more than seven hundred and twenty dollars. [Laws 1887, ch. 100, § 9, as amended by Laws 1889, ch. 181, § 5, March 13.]

(742) Fines. § 189. All fines or forfeitures collected by the police judge upon charges for the violation of the laws of the state shall be by him paid into the county treasury of the county in which said city is located, for the use of the common-school fund of such county. All fines and forfeitures collected upon charges for a violation of city ordinances, and all fees of officers collected by the police judge under any act of the legislature or city ordinance for services, shall be paid to the city treasurer, to be held by him subject to the order of the board of police commissioners for the payment of the salaries of all officers under this law, and the expenses of the police department. And the mayor and council are required to set apart and pay monthly out of the general fund of the city such sum as may

be necessary to pay the balance due for such salaries and expenses, after deducting the amount of such fines so paid to said treasurer. After the payment of the salaries of all officers under this law, and expenses of the police department, if there should be a surplus in the hands of the city treasurer, derived from fines and forfeitures collected by the police judge for a violation of city ordinances, such surplus shall be paid over to the general revenue fund of said city. [Laws 1887, ch. 100, § 10, as amended by Laws 1889, ch. 181, § 6, March 13.]

(743) Quo warranto against mayor. § 190. The attorney general of this state, or the assistant attorney general for any county, shall have authority to commence and prosecute to final judgment an action in *quo warranto*, or other appropriate proceeding, in the supreme court or in the proper district court, against the mayor and councilmen of any city of the second class which by means of licenses pretends to authorize, or by simulated fines or forfeitures attempts to foster and encourage, the illegal manufacture or sale of intoxicating liquors, or which shields offenders against the laws of the state relating to the manufacture and sale of intoxicating liquors, or refuses or habitually neglects to require the police officers to perform their duties under such laws: *Provided*, That no such proceedings shall be commenced until petitioned for by at least fifty householders of such city, or the executive council shall direct such proceedings. [Laws 1887, ch. 100, § 11, March 2.]

(744) Offices forfeited. § 191. Upon the finding of such court that such city has, up to the commencement of the action, either by means of licenses pretended to authorize, or by simulated fines or forfeitures attempted to foster and encourage, the illegal manufacture or sale of intoxicating liquors, or has shielded offenders against the laws of the state relating to the manufacture and sale of intoxicating liquors, or has refused or habitually neglected to require the police officers to perform their duties under such laws, judgment of ouster shall be rendered by such court against the mayor and council of such city, and

the police force thereof, including the police judge, marshal, and all policemen; and each and all of these offices in said city shall become vacant within ten days after the rendition of such judgment, and their functions and pay shall cease, any other act of the legislature fixing their term of office and compensation to the contrary notwithstanding; and such city shall be adjudged to pay all costs of the action. [Laws 1887, ch. 100, § 12, March 2.]

(745) Governor's duty. § 192. It shall be the duty of the clerk of the court in which such judgment of ouster is rendered to immediately certify a copy of the journal entry thereof, under the seal of the court, to the governor, who shall thereupon appoint a board of police commissioners for such city of the second class, which commissioners shall have like qualifications, powers and duties, and for same term, as prescribed herein for such commissioners in cities of the first class; and thereupon this act shall take effect and be in force in such city until such time as hereinafter provided. [Laws 1887, ch. 100, § 13, as amended by Laws 1889, ch. 181, § 7, March 13.]

(746) Laws and ordinances suspended. § 193. During the time that the police government of any city is administered under this act, all acts of the legislature and all ordinances of such city, in so far as the same are in conflict or inconsistent with this act, shall be suspended, and shall remain inoperative. [Laws 1887, ch. 100, § 14, March 2.]

(747) Police judge; powers. § 194. The police judge appointed by the board shall be the legal successor of the police judge elected by the city, and shall be entitled to the custody of the records and papers of the office, and he may give transcripts and certify the same with like effect as such predecessor might have done; and when the police government of any such city of the second class under this act shall cease, the police judge elected by such city shall be the legal successor of the police judge appointed by the board, and shall be entitled to the custody of the records and papers of the office, and he may give transcripts and certify the same with like effect as the

police judge under this act might have done. And when the government of such city of the second class under this act shall cease, the board shall turn over to the city clerk all the records and papers of the board, and thereafter they shall be deemed records and papers of the city clerk's office. [Laws 1887, ch. 100, § 15, March 2.]

(748) Act not in force, when. § 195. Whenever the governor shall deem it no longer necessary to continue the government of any city by this act, the governor shall issue, and cause to be published in the official state paper, his proclamation to that effect; thereupon a police judge, a marshal and a sufficient number of policemen shall be appointed by the mayor, by and with the consent of the council, in like manner as if this act had never been passed; and the functions and salaries of the police judge under this act shall cease and determine upon the appointment of such police judge and his qualification under such appointment; and the functions and salaries of all officers under this act shall cease and determine upon the appointment of such policemen and marshal by the mayor by and with the consent of the council, and their qualification under such appointment. And the prosecution of an action to final judgment, and the placing of the police government of a city under the provisions of this act, shall not be construed as a bar to a subsequent action and further proceedings under this act, whenever it shall be deemed necessary by the attorney general or the assistant attorney general for the county in which such city is located. [Laws 1887, ch. 100, § 16, as amended by Laws 1889, ch. 181, § 8, March 13.]

(749) Bonds. § 196. The board of commissioners shall have exclusive power to approve all bonds of the officers of the police department. [Laws 1889, ch. 181, § 9, March 13.]

(750) Fines. § 197. No fines assessed or on sentences adjusted by the police judge shall be remitted by the mayor and council except upon the recommendation of the board of police commissioners. [Laws 1889, ch. 181, § 10, March 13.]

(751) Bond forfeited. § 198. Where a bond is forfeited in the police court for a violation of a state law or a city ordinance, it shall be the duty of the city attorney to bring suit on the bond at once upon the request of the police commissioners, and to prosecute to final judgment and execution under their special direction. [Laws 1889, ch. 181, § 11, March 13.]

(752) Additional police. § 199. The commissioners shall have the power to employ, in addition to the other policemen heretofore provided for, one captain, two sergeants for each police district, one sanitary sergeant, one jailer, and one driver; also two policemen who shall not be required to wear the uniform of the city, and whose wages shall not exceed \$60 per month. [Laws 1889, ch. 181, § 12, March 13.]

(753) Authority of policemen. § 200. That upon the filing of an affidavit with the police judge charging that in any house, tenement, inclosure or other place named in such affidavit, and the issuing of a warrant by him, the marshal and police shall have authority to break open and enter any house, tenement, inclosure or other place where any penal law of the state or city ordinance has been, is being, or is about to be violated, and arrest the offender: *Provided*, That if it shall be made to appear that such affidavit is filed without probable cause, or from malicious motives, the person so filing such affidavit shall be held liable for all costs in the case, and damages sustained by breaking any such building or inclosure. [Laws 1889, ch. 181, § 13, March 13.]

(754) Deposits sold. § 201. All goods that have been deposited in or at any of the station-houses, or with any policeman at the police court, that shall belong to any of the prisoners or to persons whose names are unknown, which shall have been on deposit for six months and unredeemed, shall be sold by order of the police judge at public auction, due notice having first been given by advertisement for four weeks in a newspaper having general circulation in the county; and the moneys arising therefrom shall be paid over to the city treasurer as

money arising from violations of city ordinances. [Laws 1889, ch. 181, § 14, March 13.]

(755) Sole police. § 202. That the police force appointed and created under this act shall constitute the sole police force of every city to which this act applies, and the city council and mayor thereof shall have no right to appoint or employ other policemen, chief of police, or officers upon the police force, or appropriate money for the payment of any officers upon the police force except those provided for in this act. All officers upon the police force or policemen appointed by the board of police commissioners shall be recognized by the mayor and council as officers of such city until official notice has been given the city by the board of police commissioners that a change has been made in the appointments to that office. [Laws 1889, ch. 181, § 15, March 13.]

Repeal. § 203. That sections one, two, five, six, nine, ten, thirteen and sixteen of the said act to which this is amendatory and supplemental are hereby repealed. [Laws 1889, ch. 181, § 16, March 13.]

CHAPTER 19.—CITIES OF THE SECOND CLASS.

AN ACT to incorporate cities of the second class, and to repeal former acts.

[Took effect March 13, 1872.]

ARTICLE 2.—POWERS AND DUTIES OF THE MAYOR.

(777) Powers of mayor. § 21. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this act are complied with. [Laws 1872, ch. 100, § 21, March 13.]

(Carrol v. Wall, 35 K. 86; Prell v. McDonald, 7 K. 426.)

(783) Enforce laws and ordinances. § 27. The mayor shall be active and vigilant in enforcing all laws and ordinances

for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, and he shall have such jurisdiction as may be vested in him by ordinance over all places within five miles of the corporate limits of the city for the enforcement of any health, quarantine, cemetery or water-works ordinance and regulation thereof. [Laws 1872, ch. 100, § 27, March 13.]

(785) Call in aid. § 29. The mayor is hereby authorized to call on every male inhabitant of the city over eighteen years of age and under the age of fifty years, to aid in enforcing the laws. [Laws 1872, ch. 100, § 29, March 13.]

(786) Remit fines; pardons. § 30. The mayor shall have power to remit fines and forfeitures, and to grant reprieves and pardons for offenses arising under the ordinances of the city, by and with the consent of the council; but no such fine or forfeiture shall be remitted or pardon granted, except at a legal session of the council, nor unless the reasons therefor, together with the order of remission or pardon, be entered on the journal by the clerk. [Laws 1872, ch. 100, § 30, March 13.]

ARTICLE 3.—THE POWERS OF THE COUNCIL.

(787) Powers of mayor and council. § 31. The mayor and council of each city governed by this act shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the constitution and laws of this state, and such as it shall deem expedient for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be necessary to carry such power into effect. [Laws 1872, ch. 100, § 31, March 13.]

(Wood v. Water Works Co., 33 K. 597; Atchison Street Ry. Co. v. Mo. Pac. Ry. Co., 31 K. 660; Franklin v. Westfall, 27 K. 614.)

(804) License taxes. § 48. The city council shall have

exclusive authority to levy and collect a license tax on auctioneers, artists, agents (including insurance, real estate, loan and mercantile agents), book or map agents or canvassers, boarding-houses, billiard tables, bridge companies or bridge corporations, bankers, banking-houses or corporations, bowling alleys, corporations, contractors, commission merchants, concerts, cattle dealers, coal yards, corn doctors, circuses, doctors, dentists, druggists, express companies and agencies, exhibitions for pay, fortune tellers, gangers, gift enterprises, grocers, hotels, hotel runners or solicitors, horse dealers, hackney or livery carriages, horoscopic views, innkeepers, inspectors, insurance companies (including accident, life, fire or marine insurance companies), ice dealers, intelligence offices, livery-stable keepers, lung testers, lawyers, merchants, museums, manageries, muscle testers or developers, magnifying glasses, newspapers and publishing houses, omnibuses, public buildings, halls and grounds, peddlers, pawnbrokers, photographers, porters, public lecturers for pay, patent-right dealers, public masquerades, public halls and street exhibitions, pistol or shooting galleries, private hospitals, retailers, railroads and railroad companies (including street or horse railroads), shows, stock yards, theaters and theatrical exhibitions, taverns, ten-pin alleys (without regard to the number of pins used), telegraph and telephone companies, wood yards, wagon yards, and all wagons and other vehicles transporting merchandise or passengers for pay. [Laws 1872, ch. 100, § 47, as amended by Laws 1881, ch. 40, § 3, March 11.]

(*Campbell v. City of Anthony*, 40 K. 652; *City of Fort Scott v. Pelton*, 39 K. 764; *City of Wyandotte v. Corrigan*, 35 K. 21; *Kansas City, Kas., v. Collins*, 34 K. 434, 435; *City of Newton v. Atchison*, 31 K. 151; *McGrath v. City of Newton*, 29 K. 364; *Franklin v. Westfall*, 27 K. 614; *State v. Young*, 17 K. 414; *Williams v. Louis*, 14 K. 606; *Snyder v. City of North Lawrence*, 8 K. 82.)

(805) How regulated. § 49. All license taxes shall be regulated by ordinance; and, except for shows, theaters and other exhibitions, shall expire on the last day of June or last day of December next after the same are issued. No license shall be issued until the amount prescribed therefor shall be

paid to the city treasurer, and no license shall in any case be assigned or transferred. Licenses shall be signed by the mayor and clerk and countersigned by the treasurer, and the clerk shall affix the corporate seal of the city thereto. [Laws 1872, ch. 100, § 48, March 13.]

(*Franklin v. Westfall*, 27 K. 616.)

(806) Tippling-houses, etc. § 50. The city council shall have power to enact ordinances to restrain, prohibit and suppress tippling-shops, billiard tables, bowling alleys, houses of prostitution and other disorderly houses and practices, games and gambling-houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecencies. No license shall ever be granted for any house of prostitution, or for any gambling-house, gambling device, game of chance, or any disorderly house or practice; and no city officer shall accept or receive any hush-money, or any money or valuable thing, from any person or persons engaged in any such business or practice, nor grant any immunity or protection against a rigid enforcement of the laws and ordinances enacted to restrain, prohibit and suppress any such business or practice. [Laws 1872, ch. 100, § 49, March 13.]

(*Alexander v. O'Donnell*, 12 K. 608; *City of Emporia v. Volmer*, 12 K. 622, 633.)

(807) Riots; firearms, etc. § 51. The council may also restrain and prohibit riots, routs, noises, assaults, and batteries, petty larceny, disturbances or disorderly assemblies, and immoral or indecent shows, exhibitions or concerts, in any street, house or place in the city; and regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks, or other dangerously combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings. [Laws 1872, ch. 100, § 50, March 13.]

(*Anderson v. City of Wellington*, 40 K. 178.)

(808) Cattle; regulate and impound; dogs. § 52. The council may regulate and prohibit the running at large of cattle, hogs, horses, mules, sheep, goats, and other animals, and

to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition and the expense of impounding and keeping the same, and for such sale; and may also provide for the erection of all needful pens, pounds and buildings for the use of the city, within or without the city limits, and appoint and compensate keepers thereof, and establish and enforce rules governing the same. The council may also regulate and provide for taxing the owners and harborers of dogs, and authorize the killing of dogs found at large contrary to any ordinance regulating the same. [Laws 1872, ch. 100, § 51, March 13.]

(*Stebbins v. Mayer*, 38 K. 573; *Smith v. City of Emporia*, 27 K. 528; *City of Independence v. Trouvalle*, 15 K. 70, 73, 74; *Gilchrist v. Schmidling*, 12 K. 263.)

(809) Horse racing, etc. § 53. The council may prevent and punish all horse racing, fast driving or riding in the streets, highways, alleys, bridges, or places in the city, and all games, practices or amusements therein likely to result in damage to any person or property, and regulate, prevent and punish the riding, driving or passing of horses, mules, oxen, or other teams, or any vehicle drawn thereby, over or upon or across sidewalks or along any streets of the city. [Laws 1872, ch. 100, § 52, March 13.]

(810) Chimneys; fire limits, etc. § 54. The council may regulate the construction of and order the suppression of and clearing of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory or business, which may be dangerous in causing or promoting fires, and prescribe limits within which no dangerous nor obnoxious and offensive business may be carried on. The council may also prescribe limits within which no building shall be constructed except of brick, stone, or other incombustible material, with fire-proof roof, and impose a penalty for the violation of such ordinance; and may cause buildings commenced, put up or removed into fire limits in violation of such ordinance to be removed or abated. The council may also procure fire engines, hooks, ladders, buckets and other apparatus, and organize fire engine, hook-and-ladder and bucket companies, and

prescribe rules of duty and the government thereof, with such penalties as they may deem proper, not exceeding one hundred dollars, and make all necessary appropriations therefor. [Laws 1872, ch. 100, § 53, March 13.]

(Wood v. Water Works Co., 38 K. 597.)

(812) Encroachment on sidewalks, etc. § 56. The council may prohibit and prevent all encroachments into and upon the sidewalks, streets, avenues, alleys and other property of the city, and may provide for the removal of all obstructions from the sidewalk, curbstones, gutters and crosswalks, at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of the person placing the same there; the council may also regulate the planting and protection of shade trees in streets, the building of bulkheads, cellar- and basement-ways, stairways, railways, windows and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks or along any streets of the city. [Laws 1872, ch. 100, § 55, March 13.]

(City of Topeka v. Tuttle, 5 K. 311; City of Atchison v. King, 9 K. 550; City of Ottawa v. Washabaugh, 11 K. 124; City of Wyandotte v. White, 13 K. 191; Smith v. City of Leavenworth, 15 K. 81; Jansen v. City of Atchison, 16 K. 358.)

(813) Market-houses. § 57. The council may purchase grounds for, and may erect and establish market-houses and market-places, and regulate and govern the same, and also contract with any person or persons, or association of persons, companies or corporations, for the erection and regulation of said market-houses and market-places, on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor in the manner hereinbefore provided. The council may also in like manner provide for the erection and government of any and all necessary buildings for the city. [Laws 1872, ch. 100, § 56, March 13.]

(817) Hospitals, water works, etc. § 61. The council may purchase or condemn, and hold for the city, within or outside the city limits, within five miles therefrom, all necessary

lands for hospital purposes and water works, and erect, establish and regulate hospitals, workhouses and poorhouses, and provide for the government and support of the same, and make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water: *Provided*, The condemnation of such property outside of the city limits shall be regulated in all respects as provided by law for the condemnation of property for railroad purposes: *And provided further*, That the police jurisdiction of the city shall extend over such lands and property to the same extent as over public cemeteries. [Laws 1872, ch. 100, § 60, March 13.]

(State *ex rel.* v. Franklin, 40 K. 410.)

(818) Contagious diseases. § 62. The council may make regulations to prevent the introduction of contagious diseases into the city, may make quarantine laws for that purpose, and enforce the same within five miles of the city. [Laws 1872, ch. 100, § 61, March 13.]

(819) Firearms, etc. § 63. The council may prohibit and punish the carrying of firearms, or other deadly weapons, concealed or otherwise, and may arrest and imprison, fine or set at work all vagrants and persons found in said city without visible means of support or some legitimate business. [Laws 1872, ch. 100, § 62, March 13.]

(824) Ordinances may be enacted. § 68. For any purpose or purposes mentioned in the preceding sections, the council shall have power to enact and make all necessary ordinances, rules and regulations, and they shall also have power to enact and make all such ordinances, by-laws, rules and regulations not inconsistent with the laws of the state as may be expedient for maintaining the peace, good government and welfare of the city and its trade and commerce; and all ordinances may be enforced by prescribing and inflicting upon inhabitants or other persons violating the same, such fine not exceeding one hundred dollars or such imprisonment not exceeding three months, or both such fine and imprisonment, as may be just for any one offense, re-

coverable with costs of suit, together with judgment of imprisonment until the fine and costs be paid or satisfied; and any person committed for the non-payment of fine and costs, or either, while in custody, may be compelled to work on the streets, alleys, avenues, areas and public grounds of the city under the direction of the street commissioner or other proper officer, and at such rate per day as the council may by ordinance prescribe, until such fine and costs are satisfied. [Laws 1872, ch. 100, § 67, March 13.]

(*Mikesell v. Durkee*, 34 K. 509; *Franklin v. Westfall*, 27 K. 614; *Mariner, Mayor, &c., v. Mackey*, 25 K. 669.)

(830) Rules governing. § 74. The council may pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof, and punishing trespassers therein; and the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself. [Laws 1872, ch. 100, § 73, March 13.]

ARTICLE 4.—POLICE JUDGE AND POLICE FORCE.

(841) Police judge; jurisdiction. § 78. The police judge shall be a conservator of the peace, and shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city; he shall keep a docket in which he shall enter every cause commenced before him as police judge. If the police judge be absent, sick, or disqualified from acting, a justice of the peace of said city shall act as police judge until such absence or objection shall cease. [Laws 1872, ch. 100, § 77, March 13.]

(*Junction City v. Keffe*, 40 K. 275; *State v. Davis*, 26 K. 205.)

(842) Vacancy. § 79. In case of a vacancy in the office of police judge by removal or otherwise, the council shall appoint a justice of the peace, or some suitable and proper person, to fill said vacancy; and the person so appointed shall hold his office for the unexpired term. [Laws 1872, ch. 100, § 78, March 13.]

(843) Police court. § 80. The council of each city of the

second class may provide at the expense of the city a suitable room or office for the police judge; and he shall hold his court in such room, and his court shall be open every day except Sundays. [Laws 1872, ch. 100, § 79, March 13.]

(844) Prosecutions, how conducted. § 81. All prosecutions for violating any city ordinance shall be entitled "The city of — against —," (naming the city and the person or persons charged); and the police judge shall state in his docket the name of the complainant, the nature or character of the offense, the date of the trial, the names of all witnesses sworn and examined, the finding of the court, the judgment or fine and costs, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in such case. The complaint, when made by the marshal, assistant marshal or regular policeman against any person arrested without process and in custody, need not be in writing; but when the accused is not in custody, the complaint shall be in writing and sworn to before a warrant be issued for his arrest. In no case shall a judgment of conviction be rendered except upon sufficient legal testimony given on a public trial, or upon a plea of guilty made in open court. [Laws 1872, ch. 100, § 80, March 13.]

(Smith v. City of Emporia, 27 K. 528; City of Emporia v. Volmer, 12 K. 622.)

(845) Docket. § 82. The city council shall furnish the police judge with a suitable docket, and he shall deliver said docket and all books and papers pertaining to his office of police judge to his successor in office. [Laws 1872, ch. 100, § 81, March 13.]

(846) Warrants; service. § 83. All warrants issued by the police judge shall be directed to the city marshal, and such warrants may be executed by the marshal, assistant marshal, the sheriff of the county, or any constable of the city. The sheriff or constable making such service shall be entitled to receive therefor such fees as are allowed them by law for similar services, to be taxed as costs. In case of the absence of the officer from the court, the police judge shall deputize some proper per-

son to execute any process issued by him. [Laws 1872, ch. 100, § 82, March 13.]

(847) Trial; commitment. § 84. When any person shall be arrested and brought before the police judge, it shall be his duty to hear and determine the complaint alleged against the defendant forthwith, unless for good cause the trial be postponed to a time certain; in which case he shall require the defendant to enter into a recognizance with sufficient surety, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him, and if he fail or refuse to enter into such recognizance, the defendant shall be committed to prison and held to answer the complaint as aforesaid. [Laws 1872, ch. 100, § 83, March 13.]

(848) Recognizance; forfeiture. § 85. In case of the breach of any recognizance entered into as aforesaid, the same shall be deemed and declared forfeited, and the mayor shall cause the same to be prosecuted against the principal and surety, or the surety alone. Such action shall be in the name of the city as plaintiff, and may be prosecuted in the district court on the transcript of the proceedings before the police judge, and a copy of such recognizance certified by the police judge; and all moneys recovered in any such action shall be paid over to the city treasurer to the credit of the general revenue fund of the city. [Laws 1872, ch. 100, § 84, March 13.]

(State v. Davis, 26 K. 205.)

(849) Want of Jurisdiction. § 86. If in the progress of any trial before the police judge it shall appear that the accused ought to be put upon his trial for an offense against the criminal laws of the state, and not cognizable before the said police judge, he shall immediately stop all further proceedings before him as such judge; and thereupon he shall cause complaint to be made before a justice of the peace, who shall proceed as in other cases cognizable before justices of the peace. [Laws 1872, ch. 100, § 85, March 13.]

(850) Witnesses; fees. § 87. It shall be the duty of the said judge to summon all persons whose testimony may be deemed essential as witnesses at the trial, and to enforce their attendance by attachment, if necessary; each witness shall receive the sum of fifty cents for each day's attendance, to be taxed as other costs in the case. [Laws 1872, ch.100, § 86, March 13.]

(851) Continuance; notice. § 88. When a trial shall be continued by the police judge, it shall not be necessary to summon any witnesses who may be present at the continuance, but the judge shall verbally notify such witnesses as either party may require, to attend before him to testify in the case on the day set for trial, which verbal notice shall be as valid as a summons. [Laws 1872, ch.100, § 87, March 13.]

(852) Punishment. § 89. If the defendant plead or be found guilty, the police judge shall declare and assess the punishment prescribed by ordinance, and render judgment accordingly, and for costs of suit, and that the defendant stand committed until the judgment is complied with. [Laws 1872, ch.100, § 88, March 13.]

(853) Discharge. § 90. Any defendant committed under the provisions of this act may be discharged on the payment of fine and costs, or on perfecting an appeal as hereinafter provided. [Laws 1872, ch.100, § 89, March 13.]

(854) Appeals. § 91. In all cases before the police judge, arising under the ordinances of the city, an appeal may be taken by the defendant to the district court, but no such appeal shall be allowed unless the defendant within ten days enter into recognizance with good and sufficient security to be approved by the police judge, conditioned for the personal appearance of the appellant before the district court of the county, on the first day of the next term thereof, to answer the complaint against him. [Laws 1891, ch.127, § 1.] Appeals from the police court of a city of the first class to the district court and from there to the supreme court may be taken by the city in the following

cases, and no other: *First*, upon a judgment for the defendant, on quashing a complaint; *second*, upon an order of the police judge arresting the judgment; *third*, upon a question reserved by the city. [Laws 1891, ch. 75, § 1.]

(855) **Malicious prosecution.** § 92. If upon the trial before the police judge or the district court, it appear to the satisfaction of the court that the prosecution was commenced without probable cause and from malicious motives, the court shall state the name of the prosecutor or complainant in the finding, and shall impose the cost of prosecution upon him; and judgment shall be rendered against such prosecutor or complainant that he pay such costs, and stand committed until the same are paid. [Laws 1872, ch. 100, § 91, March 13.]

(*Mariner v. Mackey*, 25 K. 669.)

(856) **Powers of judge.** § 93. The police judge shall have power to administer the oaths and enforce due obedience to all orders, rules and judgments made by him, and may fine or imprison for contempt offered to such judge whilst holding his court, or to process issued by him, in the same manner and to the same extent as the district court. [Laws 1872, ch. 100, § 92, March 13.]

(857) **Duties of judge.** § 94. The police judge shall, within the first three days of each month, make out a list of all the cases heard or tried before him during the preceding month, giving in each case the name of the defendant, the fine imposed, if any, the amount of costs (showing the amount taxed in favor of each officer), the names of the defendants committed, the causes appealed to the district court, and the amount collected by him as fine and costs separately. Such judge shall verify such list and statement by affidavit, and file the same forthwith with the city clerk who shall lay the same before the city council at their first session thereafter; and the police judge shall within the three days aforesaid pay to the city treasurer the full amount of all fines collected by him during the preceding month, less only the amount of costs legally taxed for himself

and the marshal or other officer serving process, in cases where the defendant on hearing or trial was found not guilty and discharged. He shall take from the city treasurer duplicate receipts for the amount of fines so paid, one of which he shall file with the city clerk. If the police judge shall thereafter collect any costs so retained, he shall state such fact and the amount thereof in his next monthly report, and pay the same to the city treasurer, taking and filing receipts therefor as aforesaid. [Laws 1872, ch. 100, § 93, March 13.]

(858) City marshal. § 95. The marshal shall be chief of police, and shall at all times have power to make or order an arrest, with proper process, for any offense against the laws of the state, or of the city, and bring the offender for trial before the proper officer of the city, and to arrest, without process, in all cases where such offense shall be committed, or attempted to be committed, in his presence. [Laws 1872, ch. 100, § 94, March 13.]

(City of Independence v. Trouville, 15 K. 70; Prell v. McDonald, 7 K. 426.)

(859) Policemen. § 96. The policemen of the city shall have the power to arrest all offenders against the laws of the state, or of the city, by day or by night, in the same manner as the marshal, and keep them in the city prison, or other place, to prevent their escape, until a trial can be had before the proper officer. [Laws 1872, ch. 100, § 95, March 13.]

(860) Removal of, etc. § 97. The marshal, in the discharge of his duties, shall be subject to the orders of the mayor only. The policemen, in the discharge of their duties, shall be subject to the order of the mayor and marshal only. But any marshal or assistant marshal or policeman may be removed by the mayor and council, either as provided in section nineteen, or in the following section. [Laws 1872, ch. 100, § 96, March 13.]

(861) Causes for removal. § 98. Upon complaint made to the mayor, or president or acting president of the council, that any marshal, assistant marshal or policeman has been intoxicated, or has been gambling, or has abused the power of his

office, or been guilty of a brutal or indecent act, or has taken or received any money, property or valuable thing whatever, other than his legal salary and fees, as a consideration for doing or omitting to do any particular act, or has refused to make an arrest in a proper case, or consented to or connived at the escape of any person legally arrested and in custody, the officer so receiving such complaint shall lay the same before the council at their first meeting thereafter. The council shall carefully and honestly inquire as to the truth of such complaint, and if they find the accused guilty, they shall forthwith, by order, to be entered on their journal, remove him from office; and he shall not be again appointed to such office unless two-thirds of the councilmen elect consent thereto. [Laws 1872, ch. 100, § 97, March 13.]

ARTICLE 7.—FUNDING BONDS.

AN ACT to enable cities of the second and third classes to re-fund their indebtedness.

[Took effect March 15, 1877.]

(883) **Penalty for wrong use of funds.** § 120. Any person who shall appropriate, use, or aid or abet in appropriating or using any of the funds or moneys mentioned in this act, for any other purpose than in this act provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum equal to the amount so misappropriated or used, and imprisoned in the county jail not less than three nor more than twelve months; and also shall be liable to a civil action for the amount so misappropriated or used, to be prosecuted in any court of competent jurisdiction. [Laws 1877, ch. 89, § 8, March 15.]

ARTICLE 9.—CONSOLIDATION.

AN ACT for the consolidation of cities.

[Took effect March 9, 1870.]

(889) **May consolidate.** § 126. Whenever two or more adjacent cities of the second class desire to consolidate themselves together so as to form but one city, such consolidation

may be made in the manner hereinafter prescribed. [Laws 1870, ch. 50, § 1, March 9.]

(997) Police jurisdiction. § 134. Such consolidated city shall constitute a district for police jurisdiction, as provided for cities of the class to which such city may belong. [Laws 1870, ch. 50, § 9, March 9.]

CHAPTER 19A.—CITIES OF THE THIRD CLASS.

AN ACT to revise and amend chapter 26 of the Laws of 1869, providing for the organization and government of cities of the third class, and to repeal chapter 108 of the General Statutes of 1868, relating to towns and villages.

[Took effect April 3, 1871.]

ARTICLE 1.—GENERAL PROVISIONS.

(944) Police judge. § 21. The police judge shall receive the fees allowed by law to justices of the peace for similar services. [Laws 1871, ch. 60, § 20, April 3.]

ARTICLE 2.—POWERS AND DUTIES OF THE MAYOR.

(947) General powers. § 24. The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have general supervision over the affairs of the city. He shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty. [Laws 1871, ch. 60, § 22, April 3.]

(951) Messages. § 28. He shall from time to time communicate to the city council such information and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city. [Laws 1871, ch. 60, § 26, April 3.]

(952) Exhibit accounts, etc. § 29. The mayor shall have power, when he deems it necessary, to require any officer of the

city to exhibit his accounts or other papers, and to make report to the council in writing touching any subject or matter pertaining to his office. [Laws 1871, ch. 60, § 27, April 3.]

(953) Jurisdiction. § 30. He shall have such jurisdiction as may be invested in him by ordinance over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof. [Laws 1871, ch. 60, § 28, April 3.]

(954) To enforce laws. § 31. The mayor is hereby authorized to call on every male inhabitant of the city over eighteen years of age and under the age of fifty years, to aid in enforcing the laws. [Laws 1871, ch. 60, § 29, April 3.]

(955) Fines and pardons. § 32. The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for offenses arising under the ordinances of the city, by and with the consent of the council. But no such fine or forfeiture shall be remitted, or pardon granted, except at a legal session of the council, nor unless the reasons therefor, together with the order of remission or pardon, be entered on the journal by the clerk. [Laws 1871, ch. 60, § 30, April 3.]

ARTICLE 3.—POWERS OF THE COUNCIL.

(958) General powers. § 35. The mayor and council of each city governed by this act shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the constitution and laws of the state, and such as it shall deem expedient for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be necessary to carry such power into effect. [Laws 1871, ch. 60, § 33, April 3.]

(City of Salina v. Seitz, 16 K. 143.)

(973) License tax. § 50. The city council shall have authority to levy and collect a license tax on auctioneers, con-

tractors, druggists, hawkers, peddlers, brokers, pawnbrokers, merchants of all kinds, grocers, confectioners, restaurants, butchers, taverns, public boarding-houses, dramshops, saloons, liquor sellers, billiard tables, bowling alleys, drays, hacks, carriages, omnibuses, carts, wagons, and other vehicles used in the city for pay, lumber dealers, furniture dealers, saddle or harness dealers, stationers, jewelers, livery-stable keepers, real estate agents, attorneys at law and physicians residing in such city, express companies or agencies, shows, theaters, and all kinds of exhibitions for pay: *Provided, however,* That all scientific and literary lectures and entertainments shall be exempt from such taxation, as well also as concerts and musical or other entertainments exclusively given by the citizens of the city. [Laws 1871, ch. 60, § 48, as amended by Laws 1872, ch. 102, § 2, March 6.]

(City of Lyons v. Cooper, 39 K. 324; City of Newton v. Atchison, 31 K. 151; Tulloss v. City of Sedan, 31 K. 165; City of Topeka v. Gillett, 32 K. 434; City of Wyandotte v. Corrigan, 35 K. 21; State v. City of Topeka, 36 K. 83; City of Cherokee v. Fox, 34 K. 16; Garden City v. Abbott, 34 K. 283; State v. Simmons, 31 K. 685; Fretwell v. City of Troy, 18 K. 271; State v. Young, 17 K. 414; City of Salina v. Seitz, 16 K. 143.)

(974) The same; how regulated. § 51. All license taxes shall be regulated by ordinance; and, except for shows, theaters and other exhibitions, shall expire on the first day of May next after the same are issued, and shall be at such rates per year as shall be just and reasonable. No license shall be issued until the amount prescribed therefor shall be paid to the city treasurer. Licenses shall be signed by the mayor and clerk and countersigned by the treasurer, and the clerk shall affix the corporate seal of the city thereto. [Laws 1871, ch. 60, § 49, April 3.]

(City of Lyons v. Cooper, 39 K. 324.)

(975) May prohibit, what. § 52. The city council shall have power to enact ordinances to restrain, prohibit and suppress tippling shops, billiard tables, bowling alleys, houses of prostitution, and other disorderly houses and practices, games, and gambling-houses, desecrations of the Sabbath day, commonly called Sunday, and all kinds of public indecencies. No

license shall ever be granted for any house of prostitution, or any gambling-house, gambling device, game of chance, or any disorderly house or practice; and no city officer shall accept or receive any hush-money, or any money or valuable thing from any person or persons engaged in any such business or practice, nor grant any immunity or protection against a rigid enforcement of the laws and ordinances enacted to restrain, prohibit and suppress any such business or practice. [Laws 1871, ch. 60, § 50, April 3.]

(City of Salina v. Seltz, 16 K. 143.)

(976) Riots, firearms, etc. § 53. The council may also restrain and prohibit riots, routs, noises, disturbances or disorderly assemblies in any street, house or place in the city; and regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks, or other dangerously combustible material, in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings. [Laws 1871, ch. 60, § 51, April 3.]

(City of Cottonwood Falls v. Smith, 36 K. 401.)

(977) The same; cattle, dogs. § 54. The council may regulate or prohibit running at large of cattle, hogs, horses, mules, sheep, goats, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition, and the expense of impounding and keeping the same, and for such sale; and may also provide for the erection of all needful pens, pounds and buildings, for the use of the city, within or without the city limits, and appoint and compensate keepers thereof, and establish and enforce rules governing the same. The council may also regulate and provide for taxing the owners and harborers of dogs, and authorize the killing of dogs found at large contrary to any ordinance regulating the same. [Laws 1871, ch. 60, § 52, April 3.]

(978) Horse racing, etc. § 55. The council may prevent and punish all horse racing, fast driving or riding in the streets, highways, alleys, bridges or places in the city, and all games,

practices or amusements therein likely to result in damage to any person or property; and regulate, prevent and punish the riding, driving or passing of horses, mules, oxen or other teams, or any vehicle drawn thereby, over, or upon, or across sidewalks, or along any streets of the city. [Laws 1871, ch. 60, § 53, April 3.]

(979) Chimneys; fires, etc. § 56. The council may regulate the construction of, and order the suppression of, and clearing of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and prescribe limits within which no dangerous nor obnoxious or offensive business may be carried on. The council may also prescribe limits within which no building shall be constructed except of brick, stone, or other incombustible material, with fire-proof roof, and impose a penalty for the violation of such ordinance. The council may procure fire engines, hooks, ladders, buckets, and other apparatus, and organize fire-engine, hook-and-ladder and bucket companies, and prescribe rules of duty and the government thereof, with such penalties as they may deem proper, not exceeding one hundred dollars, and make all necessary appropriations therefor. [Laws 1871, ch. 60, § 54, April 3.]

(985) Hospitals, etc. § 62. The council may purchase and hold for the city, within or outside the city limits, all necessary lands for hospital purposes and water works, and erect, establish and regulate hospitals, workhouses and poorhouses, and provide for the government and support of the same, and make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water. [Laws 1871, ch. 60, § 60, April 3.]

(986) Contagious diseases. § 63. The council may make regulations to prevent the introduction of contagious diseases into the city, may make quarantine laws for that purpose, and enforce the same within five miles of the city. [Laws 1871, ch. 60, § 61, April 3.]

(987) Firearms; vagrants. § 64. The council may prohibit and punish the carrying of firearms or other deadly weapons, concealed or otherwise, and may arrest and imprison, fine, or set at work, all vagrants and persons found in said city without visible means of support, or some legitimate business. [Laws 1871, ch. 60, § 62, April 3.]

(989) Depots; levees; railways. § 66. The council shall have power to regulate levees, depots, depot grounds and places for storing freight and goods, and to provide for the passage of railways through the streets and public grounds of the city; also, to regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars and tracks within the limits of said city, and to prescribe rules relating thereto and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines. [Laws 1871, ch. 60, § 64, April 3.]

(991) Ordinances, enforcement of. § 68. For any purpose or purposes mentioned in this article, the council shall have power to enact and make all necessary ordinances, rules and regulations; and they shall also have power to enact and make all such ordinances, by-laws, regulations and resolutions not inconsistent with the laws of the state, as may be expedient, in addition to the special powers in this section granted for maintaining the peace, good government and welfare of the city, and its trade, commerce and manufactories; and to enforce all ordinances by inflicting fines, forfeitures and penalties upon inhabitants or other persons for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, and to provide for the recovery and collection thereof, and in default of payment, to provide for confinement in the city prison or workhouse, or at labor on the streets, or both. [Laws 1871, ch. 60, § 66, April 3.]

(City of Miltonvale v. Lanoue, 35 K. 608; City of Salina v. Seitz, 16 K. 143.)

AN ACT conferring additional powers upon cities of the third class.

(992) **Weights and measures.** § 68a. In addition to the other powers provided by law, the mayor and council of cities of the third class may provide by ordinance for the inspection and weighing of hay, grain, coal, cattle and hogs, and for the measuring of wood for fuel, and determine the place or places of the same, and regulate and prescribe the place or places of exposing for sale hay, coal, and wood; may purchase and locate scales for such weighing, appoint a weighmaster, and prescribe his duties and fees. The council shall require such weighmaster to give a proper bond to the city, for the faithful performance of his duties: *Provided*, that in no case shall there be any greater charge made for weighing than five cents for a single draft. [Laws 1883, ch. 36, § 1, March 4.]

ARTICLE 4.—OF CEMETERIES.

(995) **Rules and ordinances.** § 71. The council may pass rules and ordinances, imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof, and punishing trespassers therein; and the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself. [Laws 1871, ch. 60, § 69, April 3.]

ARTICLE 5.—JURISDICTION OF THE POLICE JUDGE.

(996) **Office.** § 72. The council of each city governed by this act shall provide, at the expense of the city, a suitable room or office for the police judge, and he shall hold his court in such room, and his court shall be open every day except Sundays. [Laws 1871, ch. 60, § 70, April 3.]

(997) **Vacancy.** § 73. In case of a vacancy in the office of police judge, the council shall appoint a justice of the peace, or some suitable and proper person, to fill said vacancy; and the person so appointed shall hold his office for the unexpired term. Every person elected or so appointed police judge shall

qualify by taking and subscribing the usual official oath, and by giving such bond and with such sureties as the council shall require; said oath and bond shall be filed with the city clerk. [Laws 1871, ch. 60, § 71, April 3.]

(998) Jurisdiction. § 74. The police judge shall be a conservator of the peace, and shall have exclusive original jurisdiction to hear and determine all offenses against the ordinances of the city. He shall keep a docket in which he shall enter every cause commenced before him as police judge. If the police judge be absent, sick, or disqualified from acting, a justice of the peace of said city shall act as police judge until such absence or objection shall cease. [Laws 1871, ch. 60, § 72, April 3.]

(*Netzel v. City of Concordia*, 14 K. 446.)

(999) Prosecutions. § 75. All prosecutions for violating any city ordinance shall be entitled, "The city of — against —," (naming the city, and the person or persons charged); and the police judge shall state in his docket the name of the complainant; the nature or character of the offense; the date of the trial; the names of all witnesses sworn and examined; the finding of the court; the judgment, or fine, and costs; the date of payment; the date of issuing commitment, if any; and every other fact necessary to show the full proceedings in each case. The complaint, when made by the marshal, assistant marshal or regular policeman, need not be in writing, if the defendant be present in court and in custody; but in every other case the complaint shall be in writing, and sworn to, before a warrant be issued for the arrest of the defendant; and in no case shall a judgment of conviction be rendered except upon sufficient legal testimony given on a public trial, or upon a plea of guilty made in open court. [Laws 1871, ch. 60, § 73, April 3.]

(*City of Kingman v. Berry*, 40 K. 625; *City of Cherokee v. Fox*, 34 K. 16; *Prell v. McDonald*, 7 K. 426.)

(1000) Docket. § 76. The city council shall furnish the police judge with a suitable docket; and said police judge shall deliver said docket, and all books and papers pertaining to his

office of police judge, to his successor in office. [Laws 1871, ch. 60, § 74, April 3.]

(1001) Warrants. § 77. All warrants issued by the police judge shall be directed to the city marshal; and such warrants may be executed by the marshal, assistant marshal, the sheriff of the county, or any constable of the city. [Laws 1871, ch. 60, § 75, April 3.]

(1002) Duty of judge; recognizance. § 78. When any person shall be arrested and brought before the police judge, it shall be his duty to hear and determine the complaint alleged against the defendant forthwith, unless for good cause the trial be postponed to time certain, in which case he shall require the defendant to enter into a recognizance with sufficient surety, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him; and if he fail or refuse to enter into such recognizance, the defendant shall be committed to prison and held to answer said complaint as aforesaid. [Laws 1871, ch. 60, § 76, April 3.]

(1003) Breach of recognizance. § 79. In case of the breach of any recognizance entered into as aforesaid, the same shall be deemed forfeited, and the mayor shall cause the same to be prosecuted against the principal and surety, or the surety alone. Such action shall be in the name of the city as plaintiff, and may be prosecuted before the police judge; and all moneys recovered in any such action shall be paid over to the city treasurer to the credit of the general fund of the city. Judgments rendered under this section may be appealed from to the district court in like manner and within the same time as appeals from justices are allowed in civil actions. [Laws 1871, ch. 60, § 77, April 3.]

(1004) Want of jurisdiction. § 80. If in the progress of any trial before the police judge it shall appear that the accused ought to be put upon his trial for an offense against the criminal laws of the state, and not cognizable before the said

police judge, he shall immediately stop all further proceedings before him as such judge; and thereupon he shall cause complaint to be made before a justice of the peace, who shall proceed as in other cases cognizable before justices of the peace. [Laws 1871, ch. 60, § 78, April 3.]

(1005) Witnesses to be summoned. § 81. It shall be the duty of the judge to summon all persons whose testimony may be deemed essential as witnesses at the trial, and to enforce their attendance by attachment if necessary. Each witness shall receive the sum of fifty cents for each day's attendance, to be taxed as other costs in the case. [Laws 1871, ch. 60, § 79, April 3.]

(1006) Continuance; notice. § 82. When a trial shall be continued by the police judge, it shall not be necessary to summon any witnesses who may be present at the continuance; but the judge shall verbally notify such witnesses as either party may require, to attend before him, to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons. [Laws 1871, ch. 60, § 80, April 3.]

(1007) Judgment, execution, etc. § 83. If the defendant plead or be found guilty, the police judge shall declare and assess the punishment, and render judgment accordingly. It shall be part of the judgment that the defendant stand committed to the city prison, or the jail of the county in which the judgment is rendered, until the judgment is complied with; and the police judge shall forthwith issue a *mittimus* requiring the defendant to be committed to the city prison, or the jail of the county in which the judgment was rendered, at his discretion; and when the *mittimus* requires the defendant to be committed to the county jail, it shall be the duty of the sheriff of such county to receive said defendant from the marshal, or assistant marshal, and confine him at the expense of said city upon the terms now provided for keeping state prisoners in the jail of his county, until the fine and costs are paid, or he be otherwise discharged by due course of law; and which *mittimus* shall also

contain a command requiring the officer to whom such process is directed forthwith to levy upon and sell the personal property of the defendant to satisfy such fine, costs and accruing costs, and shall contain the same commands with reference thereto and be executed in the same manner as an ordinary execution issued by a justice of the peace on a money judgment, except its return shall not be required until the same is satisfied, or the defendant discharged by due course of law. All judgments heretofore rendered by the police judge, and remaining unsatisfied, may be enforced in the manner above indicated. [Laws 1871, ch. 60, § 81, as amended by Laws 1879, ch. 84, § 1, March 15.]

(City of Miltonvale v. Lanoue, 35 K. 608; State v. Chapman, 38 K. 134.)

(1008) Discharge. § 84. Any defendant committed under the provisions of this act may be discharged on the payment of the fine and costs, or on perfecting an appeal as hereinafter provided. [Laws 1871, ch. 60, § 82, April 3.]

(1009) Fines paid. § 85. All fines and penalties collected, arising from a breach of the ordinance of the city, shall be paid to the city treasurer by the police judge, immediately after receiving the same. [Laws 1871, ch. 60, § 83, April 3.] (Supposed to be repealed by the act next following.)

AN ACT relating to the jurisdiction of police judges in cities of the third class; amendatory of section 33, chapter 60, of the Laws of 1871.*

Be it enacted by the legislature of the state of Kansas:

SECTION 1. Section thirty-three of chapter sixty of the Laws of eighteen hundred and seventy-one is hereby amended so as to read as follows: Whenever any fine or penalty shall be assessed against any person for a violation of any ordinance of the city, such fine or penalty shall be collected in the following manner, to wit: All costs arising from a prosecution for the violation of any ordinance shall be paid to the police judge, and the fine or penalty assessed against the person as a punishment for such

*Mistake in title of this act; it evidently refers to the preceding section.

violation, other than costs, shall be, by the person against whom such fine or penalty is assessed, paid to the city treasurer, who shall upon the receipt of such fine or penalty, give to the person so paying the same a receipt therefor, which receipt shall be, by the person receiving the same, filed with the police judge; and such judge shall deposit and file such receipt with the papers in the case, and make an entry thereof in his docket. When such fine or penalty has been so paid, and the receipt thereof delivered to the police judge, it shall be the duty of the police judge to discharge such person from custody. [Laws 1886, ch. 71, § 1, February 27.]

Section thirty-three of chapter sixty of the Laws of eighteen hundred and seventy one, and all acts and parts of acts in conflict herewith, be and the same are hereby repealed. [Laws 1886, ch. 71, § 2, February 27.]

(1010) Appeal allowed. § 86. In all cases before the police judge, arising under the ordinances of the city, an appeal may be taken by the defendant to the district court; but no such appeal shall be allowed unless the defendant, within ten days, shall enter into recognizance with good and sufficient security, to be approved by the police judge, conditioned for the personal appearance of the appellant before the district court of the county, on the first day of the next term thereof, and for the payment of such fine and costs as shall be imposed on him if the case shall be determined against the appellant. [Laws 1871, ch. 60, § 84, April 3.]

(Solomon City v. Hughes, 24 K. 211.)

(1011) Prosecutor pay costs. § 87. If upon the trial before the police judge or district court it appear to the satisfaction of the court that the prosecution was commenced without probable cause, and from malicious motives, the court shall state the name of the prosecutor in the finding, and shall impose the costs of prosecution upon him; and judgment shall be rendered against such prosecutor or complainant that he pay such costs, and stand committed until the same are paid. [Laws 1871, ch. 60, § 85, April 3.]

(1012) Power of judge. § 88. The police judge shall have the power to enforce due obedience to all orders, rules and judgments made by him, and may fine or imprison, for contempt offered to such judge, whilst holding his court, or to process issued by him, in the same manner and to the same extent as the district court; and he shall be entitled to the fees prescribed by law for justices of the peace for similar services, to be taxed as costs in the cause. [Laws 1871, ch. 60, § 86, April 3.]

(City of Iola v. Harris, 40 K. 629.)

ARTICLE 6.—OF THE MARSHAL AND POLICE.

(1013) Chief of police; powers. § 89. The marshal shall be chief of police, and shall at all times have power to make arrests with or without process, or order the arrest of all offenders against the laws of the state, or of the city, by day or by night; to keep all persons arrested in the city prison, county jail, or other proper place; to prevent their escape until a trial can be had before the proper officer; and to execute all processes issued by the police judge and delivered to him for that purpose. [Laws 1871, ch. 60, § 87, as amended by Laws 1879, ch. 84, § 2, March 15.]

(1014) Assistant. § 90. The assistant marshal of the city shall have the same power as is conferred upon the marshal in the next preceding section. [Laws 1871, ch. 60, § 88, as amended by Laws 1879, ch. 84, § 3, March 15.]

(1015) Policemen. § 91. The policemen of the city, in the discharge of their duties, shall be subject to the orders of the marshal only, as chief of police; but any marshal, assistant marshal or policeman may be removed by the council for neglect of duty, or other proper cause, as provided in sections eight and ninety. [Laws 1871, ch. 60, § 89, April 3.]

(Peters v. City of Lindsborg, 40 K. 654.)

(1016) Removal from office. § 92. Upon complaint made to the mayor, or president, or acting president of the council, that any marshal, assistant marshal, or policeman, has

been intoxicated, or has been gambling, or has abused the power of his office, or has been guilty of a brutal or indecent act, or has taken or received any money, property or valuable thing whatever, other than his legal salary or fees, as a consideration for doing or omitting to do any particular act, the officer so receiving such complaint shall lay the same before the council at their first meeting thereafter; the council shall carefully and honestly inquire as to the truth of such complaint, and if they find the accused guilty, they shall forthwith, by order to be entered on their journal, remove him from office; and he shall not be again appointed to such office unless two-thirds of the councilmen-elect consent thereto. [Laws 1871, ch. 60, § 90, April 3.]

(1017) Other powers and duties. § 93. The duties, powers and privileges of all officers of every character, in any way connected with the city government, not herein defined, shall be defined by ordinance of the city council. [Laws 1871, ch. 60, § 91, April 3.]

CHAPTER 19c.—CITIES.

ARTICLE 4.—LIBRARIES.

AN ACT to authorize cities to establish and maintain free public libraries and reading rooms.

[Took effect March 25, 1886.]

(1089) Rules. § 11. Every library and reading room established under this act shall be forever free to the use of the inhabitants of the city where located, subject always to such reasonable rules and regulations as the library board may adopt in order to render the use of said library and reading room of the greatest benefit to the greatest number; and said board may exclude from the use of said library and reading room any and all persons who shall willfully violate such rules; and said board may extend the privileges and use of such library and reading room to persons residing outside of such city in this state, upon

such terms and conditions as said board may from time to time by its regulations prescribe. [Laws 1886, ch. 72, § 5, March 25.]

(1091) City may pass ordinances. § 13. The mayor and city council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons committing injury to such library building, or the grounds, or other property thereof, and for injury to or failure to return any book belonging to such library. [Laws 1886, ch. 72, § 7, March 25.]

CHAPTER 22.—CONVEYANCES.

AN ACT for the protection of the records of the several counties of the state of Kansas, and regulating the business of abstracting in relation thereto.

[Took effect March 16, 1889.]

(1147) Abstracters. § 36a. That it shall be unlawful for any person, firm or corporation to engage in the business of abstracting, or making abstracts of title to real estate in any of the counties of the state of Kansas, without first having executed and filed with the county clerk of the county in which said person, firm or corporation intends to engage in the business of abstracting, a bond, to be approved by the board of county commissioners of said county, with three or more good and sufficient sureties, in the penal sum of five thousand dollars, conditioned that they will properly demean themselves in the business of abstracting, and will in no way mutilate, deface or destroy any of the records of the several county offices to which they may have access, and that they will not in any way interfere with, hinder or delay the several county officers in the discharge of their duties while using said records in the prosecution of said business of abstracting: *Provided, however,* That the records shall in no case be taken from the county office to which they belong. The person, firm or corporation who shall execute and file said bond of five thousand dollars for said purpose, shall be liable on said bond: first, to the state of Kansas; second, to

any person who shall be in any way damaged by any mutilation, injury or destruction of any record or records of the several county offices to which he or they may have access, to the amount of damage actually done said person; and third, said person, firm or corporation shall be liable on said bond to any person or persons for whom he or they may compile, make or furnish abstracts of title, to the amount of damage done to said person or persons by any incompleteness, imperfection or error made by said person, firm or corporation in compiling said abstract. And the filing of said bond shall be a guaranty of the good faith and responsibility of said person, firm or corporation engaged in said business of abstracting. [Laws 1889, ch. 1, § 1, March 16.]

(1148) Bond. § 36b. Upon the execution and filing of the bond hereinbefore mentioned, each person, firm or corporation so filing such bond shall have free access to the county records of the several county offices for the purposes of the prosecution of their said business of abstracting, and the compiling, posting, and keeping up of their abstract books necessary for the proper conduct of their said business, under the direct supervision of the county officers having the legal custody of said records; and while handling and using said county records for any of the purposes of this act the said abstracters shall be under the same obligation to protect and carefully keep and preserve said records as the several county officers who have the legal custody of said records, and subject to the same penalties for a violation of such duty as said officers would be. [Laws 1889, ch. 1, § 2, March 16.]

(1149) Misdemeanor. § 36c. Any person, firm or corporation who shall engage in the business of abstracting, or making abstracts of title for anyone, except on their own property, or as a legally-constituted attorney for another person, without first having executed and filed the bond in compliance with section one of this act, shall be refused the use of the records by the officer having the custody thereof, and shall be deemed guilty

of a misdemeanor, and upon conviction thereof be fined not exceeding one hundred dollars for each and every such offense. [Laws 1889, ch. 1, § 3, March 16.]

(1150) **Officer.** § 36*d*. Any county officer who shall prevent or prohibit any person who has complied with the provisions of this act from a proper use of the records of their said office as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars for each and every such offense. [Laws 1889, ch. 1, § 4, March 16.]

CHAPTER 23.—CORPORATIONS.

ARTICLE 3.—POWERS AND DUTIES.

(1181) **Statement; penalty for neglect.** § 24. It shall be the duty of the president and secretary of each corporation for profit, annually, on the first day of January, to prepare, under their own oath, and deposit in the office of the secretary of state of this state, a detailed statement of the condition of such company on the thirteenth day of December then next preceding, exhibiting the following, namely: *First*, the amount of the capital stock of the company; *second*, the property or assets held by the company; *third*, the liabilities of such company; *fourth*, the receipts of the company during the preceding year; *fifth*, the expenditures during the preceding year. Every corporation for profit, created under any law of this state, failing to make and deposit such statement, shall be subject to a penalty of two hundred dollars, and an additional two hundred dollars for every month that such company shall continue thereafter to transact business. [G. S. 1868, ch. 23, § 24, Oct. 31.]

ARTICLE 6*a*.—RAILROADS.

(1262) **Crossing on public highway.** § 105. It shall be the duty of every railway company or corporation owning,

controlling or operating any line of railroad within this state, to construct and keep in repair, at each crossing of any regularly laid out public highway, a good and substantial crossing, by securing on each side of each rail a board not less than twelve feet long and not less than twelve inches wide and two inches thick, and shall fill the space between the two inside boards with gravel or broken stones, or shall floor the space with boards not less than two inches thick and twelve feet long. [Laws 1876, ch. 105, § 1, March 9.]

(1263) Penalty. § 106. Any railroad company or corporation that shall fail to comply with the provisions of the first section of this act within sixty days after the taking effect thereof shall be liable to a fine of five dollars for each and every day that they so fail to comply therewith, for each and every crossing, to be recovered by an action brought in the name of the township in which the crossing or crossings are situated; to be recovered before any court of competent jurisdiction. [Laws 1876, ch. 105, § 2, March 9.]

(Snyder v. North Lawrence, 8 K. 32; M. K. & T. Ry. Co. v. Long, 27 K. 684.)

ARTICLE 6c.—RAILROAD COMMISSIONERS.

(1345) Punishment for perjury. § 189. Any person who shall willfully and corruptly swear, testify or affirm falsely to any material matter, upon any oath, or affirmation, or declaration, legally administered in any cause, matter or proceeding before said board, or any member thereof, or in any return, answer or report required by this act to be made, shall be deemed guilty of willful and corrupt perjury, and shall be punished by imprisonment in the penitentiary at hard labor, for a term not exceeding seven years. [Laws 1883, ch. 124, § 22, March 8.]

ARTICLE 8.—TELEGRAPH CORPORATIONS.

(1388) Injury to property. § 232. Any person who shall willfully and intentionally injure, molest or destroy any of the lines, posts, piers, abutments, or other material or property pertaining to any line of telegraph erected in this state,

shall be deemed guilty of a misdemeanor, and shall, upon conviction in the court having criminal jurisdiction in the proper county, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, at the discretion of the court having cognizance thereof. [G. S. 1868, ch. 23, § 79, Oct. 31.]

CHAPTER 24.—COUNTIES.

AN ACT relating to the organization of new counties, the same being amendatory of section 1 of chapter 63 of the Session Laws of 1876, being an act to amend an act entitled "An act relating to the organization of new counties," approved March 1, 1872.

(1578) Fraud in census; felony. § 121. That any census taker who shall make false and fraudulent returns as to any of the requirements of this act, and any person who shall swear falsely to any question asked by said census taker, and any persons conspiring together to fraudulently organize any unorganized county, or to secure the location of any temporary or permanent county seat, shall be deemed to be guilty of a felony, and punishable, upon conviction thereof, by imprisonment in the penitentiary for not less than one nor more than five years. [Laws 1876, ch. 66, § 2, as amended by Laws 1887, ch. 128, § 2, March 11.]

(1579) When fraud suspected. § 122. That whenever the governor may have any reason to believe that said memorial, affidavits, in the census enumeration or petition, or any of the proceedings required in section one of this act, are incorrect, fraudulent, or untrue, he is authorized and required to delay or refuse to issue his proclamation, and to institute an investigation by sending three disinterested householders of this state into such unorganized county, to ascertain the truth or falsity of such petition, memorial, census, or affidavits, and to order the attorney general to commence proceedings in the name of the state against any person or persons who may be guilty of

violating any of the provisions of this act, or of any and all persons who may conspire together to fraudulently organize any county under this act. [Laws 1876, ch. 63, § 3, March 15.]

(*Martin, Governor, v. Ingham*, 38 K. 662; *Martin, Governor, v. Lacy*, 39 K. 705.)

(1608) Costs in criminal cases. § 150. That whenever any criminal prosecution shall be commenced in any of the unorganized counties of the state, the state of Kansas shall be responsible for and shall pay the costs of such prosecution to the same extent as counties are responsible for costs in criminal cases. [Laws 1873, ch. 72, § 33, March 20.]

(1609) Fee bill. § 151. That whenever the state shall be responsible for costs in any criminal proceeding, a fee bill shall issue, directed to the auditor of state, who shall carefully examine said bill and see that the same is correct, and shall thereupon issue his warrant upon the treasurer for so much thereof as he may find to be authorized by law. [Laws 1873, ch. 72, § 34, March 20.]

CHAPTER 25.—COUNTIES AND COUNTY OFFICERS.

ARTICLE 2.—COUNTY COMMISSIONERS.

(1628) Unlawful vote; misdemeanor. § 15c. Any commissioner in any county having thirty thousand (30,000) inhabitants, who shall vote for any tax or appropriation not authorized by law, or who shall divert any part of any fund raised by taxation to any other purpose than that for which it was raised, shall be deemed to be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than one thousand (1,000) dollars. [Laws 1871, ch. 74, § 6, March 23.]

(1657) Warrants for witnesses' fees. § 38. No county board, in allowing fees to justices of the peace or other persons, for costs in criminal cases, to be paid by the county, shall issue warrants for witnesses' fees to persons other than those entitled thereto; and no clerk shall deliver any county warrant, for fees

in criminal cases, to any other person than those named therein, unless the person applying for the same shall produce and file with the county clerk a written order for the same. [G. S. 1868, ch. 25, § 38, Oct. 31.]

(1659) Unlawful to allow claims. § 39a. It shall be unlawful for any board of county commissioners to allow any claim or account against the county at any special or adjourned meeting of the board, except for election expenses and jury fees; and all other claims or accounts against the county shall be allowed only at the regular meetings of the board in January, April, July and October of each year. [Laws 1876, ch. 64, § 1, March 9.]

(1660) Building Bridge. § 39b. It shall be unlawful for any board of county commissioners to make an appropriation for building any bridge unless notice of the intention to build such bridge has been first published in the official paper of the county at least thirty days prior to the time fixed for a regular meeting of the board, which notice shall specify the place where such bridge is proposed to be built, and the estimated cost of the same; and no appropriation for building any bridge shall be made except at a regular meeting of the board. [Laws 1876, ch. 64, § 2, March 9.]

(K. C. B. & I. Co. v. Commissioners, 35 K. 557.)

(1661) Penalty. § 39c. Any county commissioner violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof be fined in a sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment. [Laws 1876, ch. 64, § 3, March 9.]

(1662) Penalty for violation of law; bond of commissioners. § 39d. That every person who is either elected or appointed to the office of county commissioner of any county in the state of Kansas, who shall willfully violate any provision of law, or fail to perform any duty required of him by law, shall be adjudged guilty of a misdemeanor, and upon conviction

thereof shall be fined in a sum not less than fifty nor more than one thousand dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment; and shall, before entering upon the duties of his office, execute to the state of Kansas a bond for the faithful performance of the duties of his office, in a penal sum of not less than one-fifth of one per cent. of the total value of taxable property upon the tax rolls of said county for the year prior to the date of his taking his office, but in no case shall any bond exceed five thousand dollars; said bond to be signed by the principal and two or more good and sufficient sureties, who shall acknowledge the execution thereof before some court having a seal, or some judge, justice or clerk thereof, or some justice of the peace, notary public, county clerk, or register of deeds, before said bond shall be of any force or effect: *Provided*, That a neglect or refusal to levy a tax for the payment of interest or principal on bonds issued to railway corporations in suit, or where the counties are endeavoring to compromise or refund the same, shall not be deemed malfeasance in office, nor shall such neglect or refusal work a forfeiture of the official bond herein provided. Said bond shall be approved by the register of deeds of such county, and filed in his office. [Laws 1875, ch. 40, § 1, as amended by Laws 1876, ch. 65, § 1, March 9.]

ARTICLE 3.—COUNTY CLERK.

(1689) File lists, etc., with secretary of state. § 60a. The county clerks of the several counties of this state shall annually, on the fourth Monday of January, prepare and file in the office of the secretary of state a list of the officers of their respective counties elected at the next preceding general election, which list shall contain the genuine signatures of all county officers and an imprint of the official seal of such as are by law required to keep them; and the county clerk shall certify under the seal of his office that such signatures and the imprint of such seals are the genuine signatures and seals of the respective officers, and that they were attached in his presence: *Provided*,

That in case of any vacancy in any county office the county clerk shall immediately transmit to the secretary of state the genuine signature of the person elected or appointed to fill such vacancy: *And provided further*, That it shall be the duty of the county clerks of the several counties of this state to forward to the secretary of state the signatures and seals of all county officers by the first day of June, A. D. eighteen hundred and eighty-five: *And provided further*, That any county clerk failing or refusing to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and punished by a fine of not less than ten nor more than fifty dollars. [Laws 1885, ch. 108, § 1, March 7.]

ARTICLE 4.—TREASURER.

(1704) Not speculate in warrants; affidavit. § 74. That it shall be unlawful for any county treasurer, or his deputies, to buy, directly or indirectly, or in any wise become a party in the purchase of, or traffic in, any state, county, city or township warrant, bill or account against the state, or county, or any city, or town, or township, for any sum less than the full par value expressed upon the face thereof, except such amounts of said state, county, or city or township warrants as may be necessary to pay his taxes; and at each settlement the county treasurer shall file an affidavit that he has not, directly or indirectly, by himself or his deputies, violated the provisions of this section; and the same shall be filed in the office of the county clerk, and preserved therein; and any treasurer who shall swear falsely in any such affidavit shall be guilty of perjury, and on conviction shall be confined in the county jail one year, and his office declared vacant. [G. S. 1868, ch. 25, § 74, Oct. 31.]

(1707) Signed and sworn to. § 75*b*. The statement made, as provided in the first section of this act, shall be signed and sworn to by the treasurer; and any treasurer who shall swear falsely in any such statement shall be guilty of perjury, and on conviction shall be confined in the penitentiary for one year, and his office declared vacant. [Laws 1874 (Special Session), ch. 8, § 2, Sept. 22.]

(1710) Statement published. § 75e. The statement of the county treasurer, when completed, shall be published once in the official newspaper of the county, and a copy thereof posted on the inside of the door of the treasurer's office. [Laws 1874 (Special Session), ch. 8, § 5, Sept. 22.]

(Wren v. Comm'rs Nemaha Co., 24 K. 301.)

(1711) Penalty. § 75f. Should any county treasurer neglect or refuse to make and publish the statement provided for in this act, he shall be liable to a fine of not less than twenty-five dollars for each and every day he shall refuse or neglect to make such statement, to be recovered by an action at law against such treasurer, said action to be brought in the name of the board of county commissioners of the proper county. [Laws 1874, (Special Session), ch. 8, § 6, Sept. 22.]

(Wren v. Comm'rs Nemaha Co., 24 K. 306.)

(1712) Penalty for neglect. § 75g. If the probate judge shall neglect or refuse to perform the duties imposed by this act, he shall be liable to a fine of five hundred dollars for each quarter he shall refuse or neglect to perform the same, to be recovered by an action at law against such judge, said action to be brought in the name of the board of county commissioners of the proper county. [Laws 1874 (Special Session), ch. 8, § 7, Sept. 22.]

(1715) Penalty for improper use of money. § 75j. That any county treasurer who shall use or loan to any corporation, company or individual, or shall permit any corporation, company or individual to use any public money coming into his possession or under his control from any source whatever, by virtue of his official position, shall be deemed guilty of a felony, and upon conviction of a violation of any of the provisions of this section shall be imprisoned in the state penitentiary at hard labor for a period of not less than three nor more than ten years, and by fine of not less than one thousand dollars nor greater than twenty thousand dollars, or by both such fine and imprisonment. [Laws 1874 (Special Session), ch. 8, § 10, Sept. 22.]

(1724) Penalty for violating act. § 75a. If any such treasurer or clerk shall willfully disregard any of the provisions of this act, he shall upon conviction thereof be adjudged guilty of a misdemeanor, and be fined in any sum not exceeding five hundred dollars, and removed from office. [Laws 1876, ch. 78, § 9, May 1.]

ARTICLE 8.—SHERIFF.

(1765) Charge of jail. § 105. The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable. [G. S. 1868, ch. 25, § 105, Oct. 31.]

(Smith Co. v. Osborne Co., 29 K. 75.)

(1767) Preserve the peace. § 107. It shall be the duty of the sheriff and under-sheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary. [G. S. 1868, ch. 25, § 107, Oct. 31.]

(1768) Deliver to successor. § 108. Whenever a new sheriff shall be elected, and shall have been qualified as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, process, orders and other papers belonging to such office and in his possession, or that of his under-sheriff or deputies, except as provided in the next succeeding section; and upon delivery thereof, such new sheriff shall execute to the former sheriff his receipt therefor. [G. S. 1868, ch. 25, § 108, Oct. 31.]

(1769) Execute and return writs and process. § 109. Sheriffs, under-sheriffs and deputies may execute and return all

such writs and processes as shall be in their hands at the expiration of their office, or at the time of their removal from office, which they shall have begun to execute by service, levy, or collection of money thereon. [G. S. 1868, ch. 25, § 109, Oct. 31.]

(Head v. Daniels, 88 K. 11; State v. Bunker, 88 K. 737.)

(1770) Breach of bond. § 110. Any default or misconduct in the office of deputy sheriff or jailer, after the death, resignation or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff. [G. S. 1868, ch. 25, § 110, Oct. 31.]

(1774) Penalty of neglect. § 114. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars; and also an action for damages to the party aggrieved. [G. S. 1868, ch. 25, § 114, Oct. 31.]

(1775) Taking illegal fees. § 115. No sheriff shall, directly or indirectly, ask, demand or receive for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiting treble damages to the party aggrieved, and in being fined in a sum not less than twenty-five dollars nor more than two thousand dollars. [G. S. 1868, ch. 25, § 115, Oct. 31.]

ARTICLE 9.—CORONER.

(1776) Elected; bond. § 116. A coroner shall be elected in each county for the term of two years, who shall, before he enters upon the duties of his office, give bond to the state of Kansas in such penal sum, not less than five hundred and not more than five thousand dollars, with sufficient sureties, not less than two, as the county clerk shall direct and approve, the condition of which bond shall be in substance the same as that

given by the sheriff; such bond to be filed with the county clerk of the proper county. [G. S. 1868, ch. 25, § 116, Oct. 31.]

(*Rogers v. Slonaker*, 33 K. 191.)

(1777) Exercise duties of sheriff. § 117. When there shall be no sheriff in an organized county it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county, until a sheriff be elected or qualified; and when the sheriff for any cause shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain a prisoner therein. [G. S. 1868, ch. 25, § 117, Oct. 31.]

(1778) The same. § 118. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case, or whenever affidavit shall be made and filed as provided in the succeeding section; and in all such cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties. [G. S. 1868, ch. 25, § 118, Oct. 31.]

(1779) The same. § 119. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced or about to be commenced in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done. [G. S. 1868, ch. 25, § 119, Oct. 31.]

(1780) Hold inquests. § 120. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of a person supposed to have died by unlawful means, the cause of whose death is unknown, found or being in the county, it shall

be his duty to summon, forthwith, six citizens of the county to appear before him at a time and place named. [G. S. 1868, ch. 25, § 120, Oct. 31.]

(1781) Administer oath to jurors. § 121. If any juror fails to appear, the coroner shall summon the proper number from bystanders immediately, and proceed to impanel them and administer the following oath, in substance: *Oath*—"You do solemnly swear [or affirm] that you will diligently inquire and true presentment make, when, how and by what means the person whose body lies here dead came to his death, according to your knowledge, and evidence given you. So help you God." [G. S. 1868, ch. 25, § 121, Oct. 31.]

(1782) Subpœnas for witnesses. § 122. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them, and jurors, for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state. [G. S. 1868, ch. 25, § 122, Oct. 31.]

(1783) Form of oath. § 123. An oath shall be administered to the witness, in substance as follows: "You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God." [G. S. 1868, ch. 25, § 123, Oct. 31.]

(1784) Testimony. § 124. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witness. [G. S. 1868, ch. 25, § 124, Oct. 31.]

(State v. Taylor, 36 K. 329.)

(1785) Return inquisition. § 125. The jurors, having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, in substance as follows, and stating the mat-

ter in the following form suggested, as far as found: "State of Kansas, ——— county. An inquisition holden at ———, in ——— county, on the ——— day of ———, A. D. 18—, before me, ———, coroner of said county, on the body of ———, or a person unknown, there lying dead; by the jurors whose names are hereunto subscribed. The said jurors, upon their oaths, do say [here state when, how, by what person, means, weapon, or accident, he or she came to his or her death, and whether feloniously.] In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid"—which shall be attested by the coroner. [G. S. 1868, ch. 25, § 125, Oct. 31.]

(1786) Inquest not made public. § 126. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest directed in the next section. [G. S. 1868, ch. 25, § 126, Oct. 31.]

(State v. Tennison, 39 K. 736.)

(1787) Order arrest. § 127. If the person charged be present, the coroner may order his arrest by an officer or any other person, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. [G. S. 1868, ch. 25, § 127, Oct. 31.]

(1788) Issue warrant to sheriff. § 128. If the person charged be not present, the coroner may issue a warrant to the sheriff or any constable of the county, requiring them to arrest the person and take him before a justice of the peace. [G. S. 1868, ch. 25, § 128, Oct. 31.]

(1789) Coroner's warrant. § 129. The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace; and when the person charged is brought before the justice, he shall be dealt with as a person held under a complaint in the usual form. [G. S. 1868, ch. 25, § 129, Oct. 31.]

(1790) Warrant shall recite. § 130. The warrant of the

coroner shall recite substantially the transaction before him, and the verdict of the jury of inquest leading to the arrest; and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint. [G. S. 1868, ch. 25, § 130, Oct. 31.]

(*Redmond v. State*, 12 K. 172; *Jennings v. State*, 13 K. 90; *State v. Smith*, 13 K. 274; *State v. Spaulding*, 24 K. 4; *State v. Tennison*, 39 K. 726.)

(1791) Return of inquest. § 131. The coroner shall then return to the county clerk the inquisition, the written evidence, and a list of the witnesses who testify material matter. [G. S. 1868, ch. 25, § 131, Oct. 31.]

(1792) Dispose of dead body. § 132. The coroner shall cause the body of a deceased person, which he is called to view, to be delivered to his friends, if any there be; but if not, he shall cause him to be decently buried, and the expenses to be paid from any property found with the body; or, if there be none, from the county treasury, by certifying an account of the expense, which being presented to the board of county commissioners, shall be allowed by them if deemed reasonable, and paid as other claims on the county. [G. S. 1868, ch. 25, § 132, Oct. 31.]

(1793) Justice as coroner. § 133. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner, in relation to dead bodies. [G. S. 1868, ch. 25, § 133, Oct. 31.]

(1794) Surgeons summoned. § 134. In an inquisition by a coroner, where he or a jury shall deem it requisite he may summon one or more physicians or surgeons to make scientific examination, who shall be allowed a reasonable compensation by the board of county commissioners. [G. S. 1868, ch. 25, § 134, Oct. 31.]

ARTICLE 10.—COUNTY ATTORNEY.

(1795) Elected, and give bond. § 135. A county attorney shall be elected in each county organized for judicial purposes, who shall hold his office for the term of two years, who shall,

before he enters upon the duties of his office, execute a bond to the state of Kansas in a sum not less than one thousand dollars, to be fixed by the county board, with two or more sufficient securities, to be approved by the clerk of said board, which bond shall be conditioned for the faithful performance of his duties as such officer, and that he will pay over to the county treasurer, in the manner prescribed by law, all moneys which shall come into his hands by virtue of his office; and he shall deposit such bond in the office of county clerk. [G. S. 1868, ch. 25, § 135, Oct. 31.]

(*Morrell v. Ingle*, 23 K. 32.)

(1796) Duties, etc. § 136. It shall be the duty of the county attorneys to appear in the several courts of their respective counties, and prosecute or defend, on behalf of the people, all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested. [G. S. 1868, ch. 25, § 136, Oct. 31.]

(*Pfefferle v. State*, 39 K. 132; *Martin, Governor, v. State*, 39 K. 576; *Huffman v. Greenwood Co.*, 25 K. 64; *Munson v. Morris Co.*, 18 K. 240; *Crowell v. Ward*, 16 K. 60; *Bartlett v. State*, 13 K. 99; *Bobbett v. State ex rel.*, 10 K. 9; *Leavenworth Co. v. Brewer*, 9 K. 307; *Clough v. Hart*, 8 K. 487.)

(1797) Appear before magistrate. § 137. Each county attorney shall, when requested by any magistrate of his county, appear on behalf of the state before any such magistrate and prosecute all complaints made in behalf of the state, of which such magistrate shall have jurisdiction; and, upon the like request, shall appear before such magistrate and conduct any criminal examination which may be had before such magistrate, and shall also prosecute all civil suits before such magistrate in which the county is a party or interested. [G. S. 1868, ch. 25, § 137, Oct. 31.]

(*Huffman v. Greenwood Co.*, 25 K. 64.)

(1798) Advice to county officers. § 138. The county attorneys shall, without fee or reward, give opinions and advice to the board of county commissioners and other civil officers of

their respective counties, when requested by such board or officers, upon all matters in which the county is interested, or relating to the duties of such board or officers, in which the state or county may have an interest. [G. S. 1868, ch. 25, § 138, Oct. 31.]

(1799) Compensation. § 139. The county attorneys of the several counties of this state shall be allowed by the board of county commissioners, as compensation for their services, as salary per year, as follows: In counties of from one to five thousand inhabitants, not more than four hundred dollars: *Provided*, That in any county which shall have attached thereto six or more unorganized counties for judicial purposes, the compensation shall be seven hundred dollars; from five thousand to seven thousand five hundred inhabitants, four hundred dollars; from seven thousand five hundred to ten thousand inhabitants, five hundred dollars; from ten thousand to twelve thousand five hundred inhabitants, seven hundred dollars; from twelve thousand five hundred to fifteen thousand inhabitants, eight hundred dollars; from fifteen thousand to eighteen thousand inhabitants, one thousand dollars; from eighteen thousand to twenty-five thousand inhabitants, twelve hundred dollars; twenty-five thousand inhabitants and upwards, two thousand dollars. The number of inhabitants shall be determined for the purposes of this act from the last returns of the assessors in each year in their respective counties, and said salaries shall be payable in quarterly installments at the end of each regular quarter by the proper county. County attorneys shall be allowed five per cent. on all moneys collected by them in favor of the state or county. Whenever the prosecutor or defendant is adjudged to pay the costs, the court shall tax as costs the following fees: For drawing indictment or information for felony, five dollars; for drawing indictment or information for misdemeanor, two dollars and fifty cents; for trial in case of murder, twenty-five dollars; for trial in other cases, ten dollars; for action on forfeited recognizance, ten dollars; in cases where prosecution is dismissed, two dollars and fifty cents; for examination of persons charged with an offense

before justice of the peace or police judge, five dollars: but in no event shall the county be liable for any of the fees herein provided. [G. S. 1868, ch. 25, § 139, as amended by Laws 1879, ch. 104, § 1, March 14.]

(State v. Granville, 26 K. 158; Huffman v. Greenwood Co., 25 K. 64; Donelson v. Howard Co., 23 K. 70; State v. O'Kane, 23 K. 244; Huffman v. Greenwood Co., 23 K. 281; Johnson Co. v. Ogg, 13 K. 198; Clough v. Hart, 8 K. 487.)

(1800) Construction. § 139a. This act* shall not be construed as to interfere with the provisions of any special law relating to the fees and salaries of county attorneys enacted for any particular county or counties. [Laws 1879, ch. 104, § 2, March 14.]

(1801) Fees; not do, what. § 140. No county attorney shall receive any fee or reward from or on behalf of any prosecutor or other individuals, except such as are allowed by law for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counsel for either party, other than the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced but undetermined, shall depend; nor shall any county attorney, while in office, be eligible to or hold any judicial or other county office whatsoever. [G. S. 1868, ch. 25, § 140, Oct. 31.]

(State v. Willson, 24 K. 189; State v. Mechem, 31 K. 435.)

(1802) Deputy. § 141. The county attorney may appoint a deputy, who shall perform all the duties of such county attorney during his absence or sickness. [G. S. 1868, ch. 25, § 141, Oct. 31.]

(1803) Court may appoint. § 142. In the absence, sickness or disability of both the county attorney and his deputy, any court before whom it is his duty to appear and in which there may be business for him may appoint an attorney to act as county attorney, by order to be entered upon the minutes of the court. [G. S. 1868, ch. 25, § 142, Oct. 31.]

*Preceding section.

(1804) Duplicate receipts. § 143. It shall be the duty of the county attorney, whenever he shall receive any money in his official capacity, to give to the person paying the same a duplicate receipt, one of which shall be filed by such person with the county clerk. [G. S. 1868, ch. 25, § 143, Oct. 31.]

(1805) Attend grand jury. § 144. Whenever required by the grand jury of any court sitting within his county, it shall be the duty of the county attorney to attend them, for the purpose of examining witnesses in their presence, or of giving them advice in any legal matter, and to issue subpoenas and other process to bring up witnesses, and to draw up bills of indictment. [G. S. 1868, ch. 25, § 144, Oct. 31.]

(1806) Election or license laws. § 145. It shall be the duty of each county attorney, upon information being given him that any person has violated any of the provisions of the election laws, or license laws, to adopt effectual measures for the conviction of such person. [G. S. 1868, ch. 25, § 145, Oct. 31.]

(1807) Vacancy. § 146. In case of vacancy in the office of county attorney, by death, resignation or otherwise, the judge of the district court shall appoint a county attorney, who shall give bonds, take the same oath and perform the same duties as the regular county attorney, and shall hold his office until a successor shall be duly elected and qualified. [G. S. 1868, ch. 25, § 146, Oct. 31.]

(*State ex rel. v. Mechem*, 31 K. 435.)

ARTICLE 12.—COUNTY SURVEYOR.

(1826) Call upon sheriff; penalty for molesting. § 165. If any county surveyor or his deputy shall be molested or prevented from doing or performing any of his or their official duties, by means of threats or improper interference of any person or persons, such surveyor shall call on the sheriff of the county, who shall accompany him and remove all force; and the person or persons thus threatening or improperly interfering with any county surveyor or his deputy, while performing his or their official duties, shall on conviction thereof be fined in a sum not

exceeding one hundred dollars, and, moreover, be liable for all damages to any person by the hindrance of the surveyor or his deputy, and also for all the expenses that may accrue in consequence of the attendance of the sheriff. [G. S. 1868, ch. 25, § 165, Oct. 31.]

ARTICLE 13.—COUNTY AUDITOR.

(1852) Punishment for malfeasance. § 186. If the auditor shall corruptly allow any claim before him, he shall be liable to the county in an amount four times as great as the amount so allowed by him, to be recovered in the name of the proper county, and such county auditor shall, in such case, be forever barred from holding any office under the laws of this state; and it shall be unlawful for any auditor to be interested in any contract with the county. [Laws 1872, ch. 67, § 13, March 14.]

(1856) Sheriffs and clerks to file statement. § 190. The sheriffs of counties and the clerks of district and criminal courts are hereby required to prepare and file with the respective county auditors, quarterly, a sworn statement of the fees, fines and other moneys collected by them, for which they are accountable to the respective counties, and it shall be the duty of the auditor to examine the books of such officers, compare the sworn statements with the facts, and report the result of his examination to the county treasurer. [Laws 1874, ch. 56, § 4, March 18.]

ARTICLE 15.—MISCELLANEOUS PROVISIONS.

(1884) County offices become vacant. § 218. Every county office shall become vacant on the happening of either of the following events, before the expiration of the term of such office: *First*, the death of the incumbent; *second*, his resignation; *third*, his removal; *fourth*, his ceasing to be an inhabitant of the county for which he was elected or appointed; *fifth*, his conviction of an infamous crime or any offense involving a violation of his official oath; *sixth*, his refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath and bond within the

time prescribed by law; *seventh*, the decision of a competent tribunal, declaring void his election or appointment; *eighth*, whenever a county commissioner shall accept and qualify in any one of the offices mentioned in section twelve. The board of county commissioners shall also declare vacant the office of every county officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond. [G. S. 1868, ch. 25, § 179, Oct. 31.]

(1885) Neglect of officer. § 219. If any board of county commissioners, or any commissioner, or any other county officer, shall neglect or refuse to perform any act which it is his duty to perform, or shall corruptly or oppressively perform any such duty, he shall forfeit his office, and shall be removed therefrom by civil action in the manner provided in the code of civil procedure. [G. S. 1868, ch. 25, § 180, Oct. 31.]

(State v. Foster, 32 K. 38; State v. Allen, 5 K. 213.)

ARTICLE 16.—COUNTY WARRANTS.

AN ACT to restrain the issuing of county warrants.

(1887) Tax levy; not issue warrants. § 222. It shall be the duty of the board of county commissioners of each county in this state to levy in each year, in addition to the taxes for other purposes, a county tax sufficient to defray all county charges and expenses incurred during such year, and twenty per centum in addition to make up for delinquent taxes of the same year; and it shall be unlawful for any board of county commissioners or county clerk to issue county warrants or orders in any one year to a greater amount than the amount of the county tax levied in the same year to defray county charges and expenses, less the amount levied for delinquencies. [G. S. 1868, p. 295, § 1.]

(Bartlett v. A. T. & S. F. Rld. Co., 32 K. 134; National Bank of Lawrence v. Barber, 24 K. 534; State *ex rel.* v. Marion Co., 21 K. 419, 437; Doty v. Ellsbree, 11 K. 209.)

(1888) Unlawful to allow or issue warrants. § 223. It shall be unlawful for any board of county commissioners to

allow any greater sum on any account, claim or demand against the county, than the amount actually due thereon, dollar for dollar, according to the legal or ordinary compensation or price for services rendered, salaries or fees of officers, or materials furnished, or to issue county warrants or orders upon such accounts, claims or demands, when allowed for more than the actual amount so allowed, dollar for dollar; and no county warrant or order shall be issued unless an account containing the several items thereof, verified by affidavit, setting forth that the same is just and correct, and remains due and unpaid, and that the amount claimed thereon is actually due, according to the legal or ordinary price for the services rendered or materials furnished, as the case may be, shall have first been presented to the board of county commissioners, and allowed as hereinbefore: *Provided*, That the county board may adopt such measures as they may deem proper to liquidate claims against the county for rents, fuel, lights, and stationery. [G. S. 1868, p. 295, § 2.]

(Shawnee Co. v. Carter, 2 K. 116; Leavenworth Co. v. Keller, 6 K. 510.)

(1889) Penalty. § 224. Any board of county commissioners, or any county commissioner, or county clerk, who shall violate any of the provisions of this act, or neglect or refuse to perform any duty herein imposed, shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be subject to a fine of not less than ten dollars nor more than ten thousand dollars, and shall, moreover, be removed from office. [G. S. 1868, p. 296, § 3.]

CHAPTER 26.—COUNTY SEATS.

ARTICLE 2.—COUNTY-SEAT ELECTIONS.

AN ACT to provide for the registration of electors at elections for permanent location or relocation of county seats.

[Took effect March 4, 1881.]

(1913) Names erased; false information. § 18. It shall be the duty of said board, at their meeting for revising and cor-

recting said lists, to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of said voting precinct, to the satisfaction of said board, to be a non-resident of said voting precinct, or otherwise not entitled to vote in said precinct at the election there next to be held: *Provided*, That said person shall be entitled to appear and offer evidence in support of his right to vote in said precinct. Any elector residing in said precinct, and entitled to vote therein, may appear before said board, and require his name to be recorded on said alphabetical list. Any person so requiring his name to be entered on said lists shall make the statement as to the street and number thereof, or where he resides, required by the provisions of this act of persons offering their votes at elections, and shall be subject to the same penalties for refusing to give such information or for falsely giving the same, and shall also be subject to challenge either by the judges or either of them, or by any other elector. And the same oaths may be administered by the judges or inspectors as now provided in case of persons offering to vote at an election; and in case no challenge is made of any person so requiring his name to be entered on said alphabetical list, or, in case of challenge, if such person shall make oath that would entitle him to vote in case of challenge at an election, then the name of any such person shall be added to said alphabetical poll list or register. [Laws 1881, ch. 89, § 6, March 4.]

(1915) Duty of clerks; residence; false statement.
§ 20. The clerks at the polls, in addition to the duties now prescribed by law, shall enter on the poll books kept by them, in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute as hereinbefore required of the board making the registry; but such entry is not to be made by them, if the registry contains correctly the name and residence of such voter; and in all cases said clerks shall enter in a column opposite the name of each person not registered the words, "Not registered." In cities, every elector, at

the time of offering his vote, shall truly state the street in which he resides, and if the house, lodging, or tenement in which he resides is numbered, the number thereof. And the clerks of the polls, in case the name of such elector is not registered, shall truly enter, in the appropriate column of the poll list, opposite the name of the elector, the street and number, or other description of the residence of such elector. In case of the refusal to make the statement as aforesaid, the vote of such an elector shall not be received. Any person who shall willfully make any false statement in relation thereto shall upon conviction thereof be punished by a fine of fifty dollars, or by imprisonment in the county jail for a period of ten days, or by both such fine and imprisonment. [Laws 1881, ch. 89, § 8, March 4.]

(1921) False registering, etc. § 26. Any person who shall cause his name to be registered in more than one voting precinct, or who shall cause his name to be registered, knowing that he is not a qualified elector in said precinct where he causes such registry to be made, or who shall falsely personate any registered voter, and any person causing, aiding, or abetting any person, in any manner, in either of said acts, shall on conviction be punished for each and every such offense by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year. All intentional false swearing before said board of registration shall be deemed willful and corrupt perjury, and on conviction shall be punished as such. If any member or officer of said board shall knowingly and willfully violate any of the provisions of this act, or be guilty of any fraud in the execution of the duties of his office, he shall be punished for each and every such offense by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year. The necessary blanks for making the registers required by law shall be prepared by the secretary of state, and transmitted to the county clerk upon his request therefor. [Laws 1881, ch. 89, § 14, March 4.]

CHAPTER 28.—COURTS, DISTRICT.

AN ACT concerning district courts.

[Took effect October 31, 1868.]

ARTICLE 1.—DISTRICT COURTS.

(1961) **Jurisdiction.** § 1. There shall be in each county organized for judicial purposes, a district court, which shall be a court of record, and shall have general original jurisdiction of all matters, both civil and criminal (not otherwise provided by law), and jurisdiction in cases of appeal and error from all inferior courts and tribunals, and shall have a general supervision and control of all such inferior courts and tribunals, to prevent and correct errors and abuses. [G. S. 1868, ch. 28, § 1, Oct. 31.]

(*In re Price*, 40 K. 156; *In re Donnelly*, 30 K. 191; *State v. Granville*, 28 K. 158; *State v. Watson*, 30 K. 281; *Jennings v. State*, 13 K. 80; *State v. Young*, 3 K. 445.)

(1962) **Powers of judges.** § 2. The judges of the district courts, within their respective districts, shall have and exercise such power in vacation or at chambers as may be provided by law, and shall also have power in vacation to hear and determine motions to vacate or modify injunctions, discharge attachments, vacate orders of arrest, and to grant or vacate all necessary interlocutory orders, and to punish for contempt in open court or at chambers, by fine, not to exceed one hundred dollars, and imprisonment, or either, and to assign not exceeding one attorney to prisoners who may be unable to employ counsel. [G. S. 1868, ch. 28, § 2, Oct. 31.]

(1965) **Judge pro tem.** § 4. A judge *pro tem.* of the district court may be selected in the following cases: *First*, when the judge shall be sick or absent at the commencement of the term; *second*, when the judge shall be sick or absent himself during or at the close of any term before all the cases pending in the court at the commencement of the term shall have been reached for trial; *third*, when the judge is interested or has been of counsel in the case or subject-matter thereof, or is re-

lated to either of the parties, or otherwise disqualified to sit.
[G. S. 1868, ch. 28, § 4, Oct. 31.]

(Peyton's Appeal, 12 K. 398.)

ARTICLE 3.—JUDICIAL DISTRICTS.

AN ACT to create the court of common pleas, of Sedgwick county, and to define the powers and jurisdiction of such court, and for the holding of the terms thereof, and to provide for the transfer from the district court of Sedgwick county of certain actions to said court of common pleas.

[Took effect March 1, 1889.]

(2093) Jurisdiction. § 112. The court hereby established shall have concurrent original jurisdiction with the district court of said county, of all civil actions excepting actions for divorce and actions for the foreclosure of mortgages, and shall have jurisdiction in addition thereto to try and determine all actions, either civil or criminal, which shall be transferred from said district court to said court of common pleas by authority of this act, or of any other laws of this state; and for the purpose of the jurisdiction hereby conferred, and of its proper and necessary exercise, all the laws of this state relating to the powers and proceedings therein shall apply to said court of common pleas, and to the mode of procedure therein, and to the process thereof, original, mesne, and final, so far as the same may be applicable. [Laws 1889, ch. 117, § 3, March 1.]

(2094) Indictments and informations. § 113. All indictments and informations which shall be filed in criminal actions or proceedings in said county between the first day of July and the last day of December, both inclusive, in each year during which the said court shall be in existence, shall be filed in the said court of common pleas and shall be triable therein; and said court shall have exclusive jurisdiction of such actions; and all the laws of the state relating to the powers and jurisdiction of the district court in criminal actions, and to the practice, pleadings and proceedings therein, shall apply to said court of common pleas and to the mode of procedure therein. [Laws 1889, ch. 117, § 4, March 1.]

(2095) Jurisdiction. § 114. The court of common pleas

shall have original jurisdiction in proceedings in *quo warranto*, *habeas corpus*, and *mandamus*, and may allow injunctions in all proper actions and proceedings. Such court shall have no original jurisdiction of any criminal action or proceeding, except as provided in the preceding section, and no appellate jurisdiction from justices of the peace, or police judges, or from the probate court; but it shall have and possess, concurrent with the district court, supervisory powers over and respecting all courts and tribunals inferior to the district court, to prevent and correct errors and abuses. It shall also have jurisdiction to decree the foreclosure of mortgages on behalf of a party or parties defendant in any action, when such foreclosure shall be necessary to the equitable adjudication of the matters in controversy. [Laws 1889, ch. 117, § 5, March 1.]

CHAPTER 31.—CRIMES AND PUNISHMENTS.

AN ACT regulating crimes and punishments.

[Took effect October 31, 1868.]

ARTICLE 1.—OFFENSES AGAINST GOVERNMENT.

(2122) Treason. § 1. Every person who shall be convicted of treason against the state shall suffer death. [G. S. 1868, ch. 31, § 1, Oct. 31.]

(2123) Misprision of treason. § 2. Misprision of treason shall consist in being a party to any treasonable purpose against this state, or in having and holding correspondence countenancing such treasonable purpose, with any person or persons who shall be engaged in setting the same upon foot against the state, or in having knowledge of the existence of a treasonable purpose, or of an act of treason against the state, and failing, speedily, to make the same known to the governor of this state; and shall upon conviction be punished by confinement in the penitentiary for not less than one nor more than ten years. [G. S. 1868, ch. 31, § 2, Oct. 31.]

(2124) Joining revolutionary society, etc. § 3. Any

citizen of this state who shall join any society or organization the object of which shall be to produce an insurrection, or to revolutionize the government of this state or of the United States, or shall furnish arms or military stores to the enemies of this state or of the United States, knowing them to be such, shall upon conviction be punished by confinement in the penitentiary for not less than one nor more than ten years. [G. S. 1868, ch. 31, § 3, Oct. 31.]

(2125) Raising flag or wearing badge. § 4. Any person who shall, within the limits of this state, assist in raising the flag of any nation or body of men who are at war with this state or the United States, or shall wear any cockade, badge, or device, intending thereby to show his sympathy with or his adherence to the enemies of this state or of the United States, shall be deemed guilty of a misdemeanor, and upon conviction before a justice of the peace shall be punished by a fine of not less than twenty-five nor more than one hundred dollars. [G. S. 1868, ch. 31, § 4, Oct. 31.]

(2126) Arrested, tried, and punished. § 5. Whenever either of the crimes described in the first, second and third sections of this act shall be committed by a citizen of this state, without the limits of the same, the person charged therewith may be arrested, tried, and punished in any county of this state, within the limits of which he may be found, and the offense may be charged to have been committed in the county in which he is arrested. [G. S. 1868, ch. 31, § 5, Oct. 31.]

ARTICLE 2.—OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

(2127) First degree. § 6. Every murder which shall be committed by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration of an attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed murder in the first degree. [G. S. 1868, ch. 31, § 6, Oct. 31.]

(State v. Gould, 40 K. 258; State v. Yarborough, 39 K. 581; State v. Harp,

31 K. 496; *State v. Smith*, 38 K. 194; *State v. Mowry*, 37 K. 369; *State v. McGaffin*, 36 K. 315; *State v. Kearley*, 26 K. 77; *State v. Mahn*, 25 K. 182; *State v. Stackhouse*, 24 K. 445; *State v. Brown*, 21 K. 38; *State v. Petty*, 21 K. 54; *State v. Winner*, 17 K. 298; *State v. Potter*, 15 K. 302; *State v. Howard*, 14 K. 178; *State v. Potter*, 13 K. 414; *State v. Crawford*, 11 K. 32; *State v. Horne*, 9 K. 120; *Craft v. State*, 3 K. 450; *Wise v. State*, 2 K. 419; *Roy v. State*, 2 K. 405; *Smith v. State*, 1 K. 365.)

(2128) Second degree. § 7. Every murder which shall be committed purposely and maliciously, but without deliberation and premeditation, shall be deemed murder in the second degree. [G. S. 1868, ch. 31, § 7, Oct. 31.]

(*State v. Crawford*, 11 K. 32; *Craft v. State*, 3 K. 450.)

(2129) Punishment. § 8. Persons convicted of murder in the first degree shall suffer death. Those convicted of murder in the second degree shall be punished by confinement and hard labor for not less than ten years. [G. S. 1868, ch. 31, § 8, Oct. 31.]

(*State v. Pierce*, 23 K. 153.)

(2130) Justifiable homicide. § 9. Homicide shall be deemed justifiable when committed by any person in either of the following cases: *First*, in resisting any attempt to murder such person, or to commit any felony upon him or her, or in any dwelling-house in which such person shall be; or, *second*, when committed in the lawful defense of such person, or of his or her husband or wife, parent, child, master, mistress, apprentice or servant, when there shall be a reasonable cause to apprehend a design to commit a felony, or to do some great personal injury, and there shall be immediate danger of such design being accomplished; or, *third*, when necessarily committed in attempting, by lawful ways and means, to apprehend any person for a felony committed, or in lawfully suppressing any riot or insurrection, or by lawfully keeping or preserving the peace. [G. S. 1868, ch. 31, § 9, Oct. 31.]

(*State v. Miller*, 35 K. 328; *State v. Rose*, 30 K. 501; *State v. Horne*, 9 K. 119; *State v. Howard*, 14 K. 178; *State v. Bohan*, 19 K. 28; *State v. Rogers*, 18 K. 78; *State v. Potter*, 13 K. 414; *Wise v. State*, 2 K. 419.)

(2131) Excusable homicide. § 10. Homicide shall be deemed excusable when committed by accident or misfortune,

in either of the following cases: *First*, in lawfully correcting a child, apprentice, servant, or in doing any other lawful act by lawful means, with the usual and ordinary caution, and without unlawful intent; or, *second*, in the heat of passion, upon any sudden or sufficient provocation, or upon sudden combat, without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner. [G. S. 1868, ch. 31, § 10, Oct. 31.]

(2132) Verdict of not guilty. § 11. Whenever it shall appear to any jury upon the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances or in a case where, by any statute or the common law, such homicide was justifiable or excusable, the jury shall return a general verdict of not guilty. [G. S. 1868, ch. 31, § 11, Oct. 31.]

(2133) Manslaughter; first degree. § 12. The killing of a human being, without a design to effect death, by the act, procurement or culpable negligence of another, while such other is engaged in the perpetration or attempt to perpetrate any crime or misdemeanor, not amounting to a felony, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree. [G. S. 1868, ch. 31, § 12, Oct. 31.]

(State v. Crawford, 11 K. 32.)

(2134) The same. § 13. Every person deliberately assisting another in the commission of self-murder shall be deemed guilty of manslaughter in the first degree. [G. S. 1868, ch. 31, § 13, Oct. 31.]

(2135) Same; unborn child. § 14. The willful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree. [G. S. 1868, ch. 31, § 14, Oct. 31.]

(2136) Second degree. § 15. Every person who shall administer to any woman, pregnant with a quick child, any medi-

cine, drug, or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be guilty of manslaughter in the second degree. [G. S. 1868, ch. 31, § 15, Oct. 31.]

(State v. Watson, 80 K. 281.)

(2137) The same. § 16. The killing of a human being without a design to effect death, in the heat of passion, but in a cruel and unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree. [G. S. 1868, ch. 31, § 16, Oct. 31.]

(2138) The same. § 17. Every person who shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or do any other unlawful act, after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree. [G. S. 1868, ch. 31, § 17, Oct. 31.]

(2139) Manslaughter; third degree. § 18. The killing of another, in the heat of passion, without design to effect death, by a dangerous weapon, in any case except wherein the killing of another was justifiable or excusable, shall be deemed manslaughter in the third degree. [G. S. 1868, ch. 31, § 18, Oct. 31.]

(Roy v. State, 2 K. 405.)

(2140) The same. § 19. The voluntary killing of a human being, by the act, procurement or culpable negligence of another, whilst such other person is engaged in the commission of a trespass or other injury to private rights or property, or engaged in any attempt to commit such injury, shall be deemed manslaughter in the third degree. [G. S. 1868, ch. 31, § 19, Oct. 31.]

(2141) Same; owner of vicious animal. § 20. If the owner of a mischievous animal, knowing its propensities, unlawfully suffer it to go at large, or shall keep it without ordi-

nary care, and such animal, while so at large and not confined, kills any human being, who shall have taken the precautions, which the circumstances may permit, to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree. [G. S. 1868, ch. 31, § 20, Oct. 31.]

(2142) Same; officer of boat. § 21. Any person navigating any boat or vessel for gain, who shall willfully or negligently receive so many passengers, or such quantity of other lading, that by means thereof such boat or vessel shall sink or upset, and thereby any human being shall be drowned, or otherwise killed, such person shall be deemed guilty of manslaughter in the third degree. [G. S. 1868, ch. 31, § 21, Oct. 31.]

(2143) Same; officer of steamboat. § 22. If any captain or other person having charge of any steamboat used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any apparatus for the generation of steam, shall from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created such an undue quantity of steam as to break or burst the boiler, or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking any person shall be killed, every such captain, engineer or other person shall be deemed guilty of manslaughter in the third degree. [G. S. 1868, ch. 31, § 22, Oct. 31.]

(2144) Same; engineer of boat. § 23. Any engineer, having charge of a steamboat engine, who shall willfully or negligently run said engine when it is not in good repair or any of the machinery connected therewith is in a condition from which explosions or breakages may be reasonably expected, or shall willfully or negligently fail to report to the master or owner the condition of such engine or other machinery therewith connected, so being out of repair or in a condition unsafe for navigation, shall be fined in a sum not less than one hundred nor more than one thousand dollars. [G. S. 1868, ch. 31, § 23, Oct. 31.]

(2145) Same; master or owner of boat. § 24. If any master or owner of a steamboat shall make or cause to be made a trip with such boat, after the engine or machinery connected therewith shall have been reported to him as unsafe or out of repair, according to the provisions of the preceding sections, without making adequate repairs; or if any engineer shall willfully or negligently take charge of and run an engine on such boat, knowing it has been so reported unfit or out of repair, unless, in either case, the engineer last aforesaid has followed the business of steamboat engineering for five years, and upon examination of such engine and machinery shall report, upon oath, in writing, that said engine and machinery are in good order, such master, owner or engineer shall be fined in a sum not less than five hundred dollars; and if any accident happen by which any person is killed, shall be deemed guilty of manslaughter in the third degree. [G. S. 1868, ch. 31, § 24, Oct. 31.]

(2146) Same; physician guilty of. § 25. If any physician, while in a state of intoxication, shall, without a design to effect death, administer any potion, drug or medicine, or do any other act to another person which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree. [G. S. 1868, ch. 31, § 25, Oct. 31.]

(2147) Fourth degree. § 26. The involuntary killing of another by a weapon, or by means neither cruel nor unusual, in the heat of passion, in any cases other than justifiable homicide, shall be deemed manslaughter in the fourth degree. [G. S. 1868, ch. 31, § 26, Oct. 31.]

(2148) The same. § 27. Every other killing of a human being, by the act, procurement or culpable negligence of another, which would be manslaughter at the common law, and which is not excusable or justifiable, or is not declared in this article to be manslaughter in some other degree, shall be deemed manslaughter in the fourth degree. [G. S. 1868, ch. 31, § 27, Oct. 31.]

(2149) Punishment; first and second degrees. § 28. Persons convicted of manslaughter in the first and second de-

gress shall be punished as follows: *First*, if in the first degree, by confinement and hard labor for a term not less than five years nor more than twenty-one years; *second*, if in the second degree, by confinement and hard labor for a term not less than three nor more than five years. [G. S. 1868, ch. 31, § 28, Oct. 31.]

(2150) Punishment; third degree. § 29. Every person convicted of manslaughter in the third degree shall be punished by confinement and hard labor for a term not exceeding three years, or by imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 29, Oct. 31.]

(2151) Punishment; fourth degree. § 30. Every person convicted of manslaughter in the fourth degree shall be punished by confinement and hard labor for a term not exceeding two years, or by imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 30, as amended by Laws 1877, ch. 139, § 1, March 15.]

(2152) Rape. § 31. Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female under the age of eighteen years, or by forcibly ravishing any woman of the age of eighteen years or upwards, shall be punished by confinement and hard labor not less than five years nor more than twenty-one years. [G. S. 1868, ch. 31, § 31, as amended by Laws 1887, ch. 150, § 1, June 20.]

(State v. Crawford, 39 K. 257; State v. Hart, 33 K. 218; State v. Ruth, 21 K. 583.)

(2153) Rape. § 32. Every person who shall have carnal knowledge of any woman of eighteen years or upwards without her consent, by administering to her any substance, liquid, or any potion, by inhalation or otherwise, which shall produce such stupor or imbecility of mind or weakness of body as to prevent effectual resistance, shall upon conviction be adjudged guilty of rape, and be punished as in the last section provided. [G. S. 1868, ch. 31, § 32, as amended by Laws 1887, ch. 150, § 2, June 20.]

(State v. McFarland, 38 K. 665.)

(2154) Compelling a woman to marry, etc. § 33. Every person who shall take any woman unlawfully, against her will, and by force, menace or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof shall be punished by confinement and hard labor for a term not less than five years nor more than twenty-one years. [G. S. 1868, ch. 31, § 33, Oct. 31.]

(2155) Taking to compel her to marry, etc. § 34. Every person who shall take any woman unlawfully, against her will, with intent to compel her by force, menace or duress, to marry him, or to marry any other person, or to be defiled, upon conviction thereof shall be punished by confinement and hard labor not less than two years nor more than twenty-one years. [G. S. 1868, ch. 31, § 34, Oct. 31.]

(2156) Female under eighteen. § 35. Every person who shall take away any female, under the age of eighteen years, from her father, mother, guardian or other person having legal charge of her person, without their consent, either for the purpose of prostitution or concubinage, shall upon conviction thereof be punished by confinement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 35, Oct. 31.]

(State v. Goodwin, 33 K. 538.)

(2157) Illicit connection. § 36. If any male person shall obtain illicit connection, under promise of marriage, with any female of good repute under twenty-one years of age, he shall upon conviction thereof be punished by confinement and hard labor in the penitentiary for a term not exceeding five years: *Provided*, That the testimony of the woman alone shall not be sufficient evidence of a promise of marriage. [G. S. 1868, ch. 31, § 36, as amended by Laws 1885, ch. 122, § 1, Feb. 5.]

(State v. Bryan, 34 K. 63.)

(2158) Mayhem, wounding, etc. § 37. Every person who shall, on purpose and of malice aforethought, cut or bite the ear, or cut or disable the tongue, put out an eye, or slit, cut or bite the nose or lip, or shall cut off or disable any limb or

member, of any person, with intent to kill, maim, or disfigure such person, shall on conviction be punished by confinement and hard labor for a term not less than five nor exceeding ten years. [G. S. 1868, ch. 31, § 37, Oct. 31.]

(2159) Assault with deadly weapon. § 38. Every person who shall, on purpose, and of malice aforethought, shoot at or stab another, or assault or beat another, or assault or beat another with a deadly weapon, or by any other means or force likely to produce death or great bodily harm, with intent to kill, maim, ravish, or rob such person, or in the attempt to commit any burglary or other felony, or in resisting the execution of legal process, shall be punished by confinement and hard labor for a term not exceeding ten years. [G. S. 1868, ch. 31, § 38, Oct. 31.]

(State v. Watson, 30 K. 281; State v. O'Kane, 23 K. 244; State v. Burwell, 34 K. 312; State v. Rhea, 25 K. 576; State v. Miller, 25 K. 699; State v. Benson, 22 K. 471; State v. Horneman, 16 K. 452; State v. White, 14 K. 538; State v. Fisher, 8 K. 208; Millar v. State, 2 K. 174; Guy v. State, 1 K. 448.)

(2160) Administering poison. § 39. Every person who shall administer to another, directly or indirectly, any poison, or any poisonous substance or liquid, or shall mingle poison with any food, drink, or medicine, with intent to kill such person, which shall be actually taken by such person or another, whereof death shall not ensue, shall be punished by confinement and hard labor not less than five nor more than ten years. [G. S. 1868, ch. 31, § 39, Oct. 31.]

(2161) The same. § 40. Every person who shall mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or who shall willfully poison any spring, well or reservoir of water, shall upon conviction be punished by confinement and hard labor not less than five nor more than twenty years. [G. S. 1868, ch. 31, § 40, Oct. 31.]

(2162) Felonious assault. § 41. Every person who shall be convicted of an assault, with an intent to commit any robbery, rape, burglary, manslaughter, or other felony, the punishment for which assault is not hereinbefore prescribed, shall be

punished by confinement and hard labor not exceeding five years, or by imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 41, Oct. 31.]

(State v. Boyland, 24 K. 186.)

(2163) Great bodily harm. § 42. If any person shall be maimed, wounded, or disfigured, or receive great bodily harm, or his life be endangered by the act, procurement, or culpable negligence of another, in cases and under circumstances which would constitute murder or manslaughter if death had ensued, the person by whose act, procurement or negligence such injury or danger of life shall be occasioned, shall, in cases not otherwise provided for, be punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months. [G. S. 1868, ch. 31, § 42, Oct. 31.]

(State v. Burwell, 34 K. 312.)

(2164) Assault and battery. § 43. Any person who shall assault, or beat, or wound another under such circumstances as not to constitute any other offense herein defined, shall upon conviction thereof be fined in a sum not exceeding five hundred dollars, or by imprisonment not exceeding one year. [G. S. 1868, ch. 31, § 43, Oct. 31.]

(State v. Mize, 36 K. 187; State v. Beverlin, 30 K. 611; State v. Taylor, 30 K. 643; State v. Finley, 6 K. 366; Guy v. State, 1 K. 448.)

(2165) Abortion. § 44. Every physician or other person who shall willfully administer to any pregnant woman any medicine, drug, or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall upon conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 44, Oct. 31.]

(State v. Watson, 30 K. 284, 753.)

(2166) Kidnapping, etc. § 45. Every person who shall, without lawful authority, forcibly seize and confine, or shall inveigle, decoy or kidnap any other person, with intent to cause such person to be sent or taken out of the state, or to be secretly confined within the state against his will, or in any way held against his will, shall upon conviction be punished by confinement and hard labor not less than five nor more than ten years. [G. S. 1868, ch. 31, § 45, Oct. 31.]

(State v. Simmons, 39 K. 262.)

(2167) Offense tried, where. § 46. Every offense prohibited in the last section may be tried in the county through which the person so seized, inveigled, decoyed, or kidnapped, shall have been taken, carried, or brought. [G. S. 1868, ch. 31, § 46, Oct. 31.]

(2168) Enticing child. § 47. Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child, shall upon conviction be punished by confinement and hard labor not exceeding five years, or imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 47, Oct. 31.]

(2169) Exposing child. § 48. If any father or mother of any child, or any person to whom such child shall have been confided, shall expose such child in a street, field, or other place, with intent wholly to abandon it, he or she shall upon conviction be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months. [G. S. 1868, ch. 31, § 48, Oct. 31.]

AN ACT for the protection of children.

[Took effect March 20, 1889.]

(2170) Protection of children. § 48a. That any person who shall torture, cruelly beat, abuse, or otherwise willfully maltreat any child under the age of eighteen years; or any person having the custody and possession of a child under the age of

fourteen years, who shall expose, or aid or abet in exposing, such child in any highway, street, field, house, out-house, or other place, with intent to abandon it; or any person having in his custody or control a child under the age of fourteen years, who shall in any way dispose of it with a view to its being employed as an acrobat, or a gymnast, or a contortionist, or a circus-rider, or a rope-walker, or in any exhibition of like dangerous character, or as a begger, or mendicant, or pauper, or street singer, or street musician; or any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child of the age last named for any of the purposes last enumerated, shall be deemed guilty of a misdemeanor, and when convicted thereof shall be subject to punishment by a fine of not more than two hundred and fifty dollars, or by imprisonment for a term not exceeding one year, or both. [Laws 1889, ch. 104, § 1, March 20.]

(2171) House of ill-fame. § 48*b*. That any person who shall entice, decoy, place, take or receive any female child or person under the age of eighteen years into any house of ill-fame or disorderly house, for the purpose of prostitution; or any person who, having in his custody or control such child, shall dispose of it to be so received, or to be received in or for any obscene, indecent or immoral purpose, exhibition or practice, when convicted thereof shall be punished by confinement in the penitentiary for not less than one year nor more than two years. [Laws 1889, ch. 104, § 2, March 20.]

(2172) Mayor of any city. § 48*c*. Any duly-incorporated society having for its object, either solely or in conjunction with other charitable labor, the protection of children, and employing an agent to aid in its work, may apply to the mayor of any city for the appointment of such agent as a special police officer; and if the mayor shall deem such agent to be trustworthy and discreet, it shall be his duty to commission such agent as a special policeman. In cities in which the police force is under the control of a board of commissioners, such application

shall be made to and such appointment made by such board of commissionera. [Laws 1889, ch. 104, § 3, March 20.]

(2173) Duties of officers. § 48d. It shall be the duty of sheriffs, deputy sheriffs, constables and police officers in any county or city to aid such society in the enforcement of all laws relating to the protection of children; and any sheriff, deputy sheriff, constable or police officer shall have power to arrest without warrant any person violating within his view any law relating to the protection of children, or other parties so offending, by virtue of a warrant issued by any magistrate having authority to issue warrant under the provisions of section 7, chapter 82 of the General Statutes of 1868; which offenders shall be tried, and if convicted shall be adjudged guilty of a misdemeanor, and be punished as provided in section one of this act. [Laws 1889, ch. 104, § 4, March 20.]

(2174) Officers. § 48e. Such officers are also hereby empowered to bring before any such magistrate any child who is subjected to cruel treatment, willful abuse or neglect, or any child under sixteen years of age found in a house of ill-fame; and said magistrate may, with the consent of the constituted authorities thereof, commit such child to an orphan asylum, or other public charitable institution in the county in which such magistrate resides, or make such other disposition thereof as now is or hereafter may be provided by law in the case of vagrant, destitute, or abandoned children: *Provided*, That any guardian, or near relative, who may feel aggrieved by any order in the premises of any magistrate (other than a judge of the supreme court or a judge of a district court), may appeal therefrom to the district court of the county or district in which such magistrate resides, which appeal shall be heard and determined without delay by said district court. [Laws 1889, ch. 104, § 5, March 20.]

(2175) Attorney, duty of. § 48f. It shall be the duty of the county attorney to prosecute all cases arising under this act: *Provided*, That where any society organized for any of the pur-

poses set forth in section 3 of this act shall by its agents have preferred the complaint upon which the proceeding is based, such prosecution may, with the consent of the court or magistrate, be conducted by the attorney of said society, who, for the purposes of such prosecution only, shall have all the powers conferred by law upon county attorneys: *Provided*, That the complainant shall not be adjudged to pay any costs of prosecution unless the court or magistrate shall find such prosecution was malicious and without probable cause. [Laws 1889, ch. 104, § 6, March 20.]

ARTICLE 3.—OFFENSES AGAINST PROPERTY.

(2176) Arson; first degree. § 49. Every person who shall set fire to or burn, in the night-time, any dwelling-house in which there shall be at the time some human being, or who shall willfully set fire to or burn, in the night-time, any boat or vessel in which there shall be at the time some human being, shall upon conviction be adjudged guilty of arson in the first degree. [G. S. 1868, ch. 31, § 49, Oct. 31.]

(2177) Dwelling-house. § 50. Every house, prison, jail, or other edifice, which shall have been usually occupied by persons lodging therein at night, shall be deemed a dwelling-house of any person having charge thereof, or so lodging therein; but no warehouse, barn, shed or other out-houses shall be deemed a dwelling-house, or part of a dwelling-house, within the meaning of this section, or the last section, unless the same be joined to, or immediately connected with and part of, a dwelling-house. [G. S. 1868, ch. 31, § 50, Oct. 31.]

(2178) Arson; second degree. § 51. Every person who shall willfully set fire to or burn, in the daytime, any inhabited dwelling-house, boat, or vessel, which if done in the night-time would be arson in the first degree, shall upon conviction be adjudged guilty of arson in the second degree. [G. S. 1868, ch. 31, § 51, Oct. 31.]

(2179) The same; in night-time. § 52. Every person who shall willfully set fire to or burn, in the night-time, any

shop, warehouse, office, storehouse, or other building, not being the subject of arson in the first degree, but adjoining to, or within the curtilage of, any inhabited dwelling-house, so that such dwelling-house shall be endangered by such firing, shall upon conviction be adjudged guilty of arson in the second degree. [G. S. 1868, ch. 31, § 52, Oct. 31.]

(2180) The same; at night. § 53. Every person who shall willfully set fire to or burn, in the night-time, any building in which shall be kept or deposited at the time any records, or the papers of any public office, shall on conviction be adjudged guilty of arson in the second degree. [G. S. 1868, ch. 31, § 53, Oct. 31.]

(2181) Third degree. § 54. Every person who shall willfully set fire to or burn, in the daytime, any shop, warehouse, or other building, which if done in the night-time would be arson in the second degree, shall on conviction be adjudged guilty of arson in the third degree. [G. S. 1868, ch. 31, § 54, Oct. 31.]

(2182) The same; at night. § 55. Every person who shall willfully set fire to or burn, in the night-time, any house, building, barn, stable, boat or vessel of another, or any house of public worship, college, academy or school-house, or building used as such, or any public building belonging to the United States or this state, or to any county, city, town, or village, not the subject of arson in the first or second degree, shall on conviction be adjudged guilty of arson in the third degree. [G. S. 1868, ch. 31, § 55, Oct. 31.]

(2183) The same; at night. § 56. Every person who shall willfully set fire to or burn, in the night-time, any brewery, distillery, grist mill, paper mill, fulling mill, saw mill, carding machine or other machine for manufacturing purposes, or any building containing the same, or erected or used as a manufactory, shall on conviction be adjudged guilty of arson in the third degree. [G. S. 1868, ch. 31, § 56, Oct. 31.]

(2184) The same. § 57. Every person who shall burn any building, boat or vessel, or any goods, wares or merchandise, or

other chattels, which shall at the time be insured against loss or damage by fire, with intent to defraud or prejudice the insurer, whether the same be the property of such person or any other, shall be upon conviction adjudged guilty of arson in the third degree. [G. S. 1868, ch. 31, § 57, Oct. 31.]

(2185) Fourth degree. § 58. Every person who shall, in the daytime, willfully set fire to or burn any dwelling-house or other building, or any machine, or any boat or vessel, which if done in the night-time would be arson in the third degree, shall upon conviction be adjudged guilty of arson in the fourth degree. [G. S. 1868, ch. 31, § 58, Oct. 31.]

(2186) The same; day or night. § 59. Every person who shall, in the day- or night-time, willfully set fire to or burn any goods, wares, merchandise, or other chattels of another, not the subject of arson in the third degree, or any stack of grain of any kind belonging to another, or any grain, grass or herbage growing or standing in the field, or any nursery or orchard of fruit trees, or any fence belonging to another, or any toll bridge or other public bridge, shall on conviction be adjudged guilty of arson in the fourth degree. [G. S. 1868, ch. 31, § 59, Oct. 31.]

(State v. Colgate, 31 K. 511.)

(2187) Punishment for arson. § 60. Every person who shall be convicted of any degree of arson shall be punished by confinement to hard labor, as follows: *First*, in the first degree, by confinement and hard labor not less than ten years nor more than twenty-one years; *second*, in the second degree, by confinement and hard labor not less than seven nor exceeding ten years; *third*, in the third degree, by confinement and hard labor not less than five nor more than seven years; *fourth*, in the fourth degree, by confinement and hard labor not more than four years, or by imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 60, Oct. 31.]

(2188) Burglary; first degree. § 61. Every person who shall be convicted of breaking into and entering, in the night-time, the dwelling-house of another, in which there shall be at

the time some human being, with intent to commit some felony, or any larceny therein, either—*First*, by forcibly bursting or breaking the wall, or any outer door, window or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or, *second*, by breaking in any other manner, being armed with some dangerous weapon, or with the assistance and aid of one or more confederates, then actually present, aiding and assisting; or, *third*, by unlocking an outer door, by means of false keys, or by picking the lock thereof, shall be adjudged guilty of burglary in the first degree. [G. S. 1868, ch. 31, § 61, Oct. 31.]

(State v. Cash, 38 K. 50; State v. Jansen, 23 K. 496; State v. Fockler, 22 K. 542; State v. Whitby, 15 K. 402; State v. Brandon, 7 K. 106.)

(2189) Burglary; second degree. § 62. Every person who shall be convicted of breaking into a dwelling-house in the daytime, under such circumstances as would have constituted the crime of burglary in the first degree if committed in the night-time, shall be deemed guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 62, Oct. 31.]

(State v. Cash, 38 K. 50.)

(2190) The same; at night. § 63. Every person who shall be convicted of breaking into a dwelling-house in the night-time, with intent to commit a felony or any larceny, but under such circumstances as shall not constitute the offense of burglary in the first degree, shall be deemed guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 63, Oct. 31.]

(State v. Cash, 38 K. 50; State v. Behee, 17 K. 402; State v. Brandon, 7 K. 106.)

(2191) The same; in daytime. § 64. Every person who shall enter into the dwelling-house of another, by day or night, in such manner as not to constitute any burglary as hereinbefore specified, with intent to commit a felony or any larceny, or being in the dwelling of another shall commit a felony or any larceny, and shall, in the night-time, break any outer door, window or shutter of a window, or any other part of said house, to get out of the same, shall be adjudged guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 64, Oct. 31.]

(2192) The same; at night. § 65. Every person who, having entered the dwelling of another in the night-time, through an open outer door or window, or other aperture not made by such person, shall break an inner door of the same house with intent to commit any felony or larceny, shall be adjudged guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 65, Oct. 31.]

(2193) The same. § 66. Every person who, being admitted into any dwelling-house with the consent of the occupant thereof, or who being lawfully in such house, shall, in the night-time, break an inner door with intent to commit a felony or larceny, shall be adjudged guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 66, Oct. 31.]

(2194) Deemed dwelling-house. § 67. No building shall be deemed a dwelling-house or any part of a dwelling-house, within the meaning of the foregoing provisions, unless the same be joined to, immediately connected with, and a part of, a dwelling-house. [G. S. 1868, ch. 31, § 67, Oct. 31.]

(2195) Other instances; second degree. § 68. Every person who shall be convicted of breaking and entering in the night-time—*First*, any building within the curtilage of a dwelling-house, but not forming a part thereof; or, *second*, any shop, store, booth, tent, warehouse or other building, or any boat or vessel, in which there shall be at the time some human being, or any goods, wares or merchandise, or other valuable thing, kept or deposited, with intent to steal or commit any felony therein, shall on conviction be adjudged guilty of burglary in the second degree. [G. S. 1868, ch. 31, § 68, Oct. 31.]

(State v. Jansen, 22 K. 498; State v. Groning, 33 K. 18; Railroad Co. v. Kunkel, 17 K. 171; State v. Comstock, 20 K. 650.)

(2196) The same. § 68a. Every person who shall open unlawfully, or break into any station-house, depot, ticket office, passenger coach, baggage, freight or express car, caboose or other railway carriage or building in this state, with intent to commit therein a felony or misdemeanor, shall upon conviction

thereof be deemed guilty of burglary in the second degree. [Laws 1871, ch. 121, § 1, March 16.]

(2197) The same; third degree. § 68 $\frac{1}{2}$. Every person who shall attempt to open unlawfully, or attempt to break into any station-house, depot, ticket office, passenger coach, baggage, freight or express car, caboose or other railway carriage or building in this state, with intent therein to commit a felony or a misdemeanor, shall upon conviction thereof be deemed guilty of burglary in the third degree. [Laws 1871, ch. 121, § 2, March 16.]

(2198) Burglary; third degree. § 69. Every person who shall be convicted of breaking and entering in the daytime, any dwelling-house or other building, or any shop, store, booth, tent, boat or vessel, under such circumstances as would have constituted the offense of burglary in the second degree if committed in the night-time, shall be deemed guilty of burglary in the third degree. [G. S. 1868, ch. 31, § 69, Oct. 31.]

(State v. Cash, 38 K. 50; State v. Brandon, 7 K. 106; State v. Behee, 17 K. 402.)

(2199) Not constitute burglary. § 70. The breaking out of any dwelling-house, or the breaking of the inner door thereof, by any person being therein, shall not be deemed such breaking a dwelling-house as to constitute a burglary, in any case other than such as are herein particularly specified. [G. S. 1868, ch. 31, § 70, Oct. 31.]

(2200) Punishment for burglary. § 71. Every person who shall be convicted of burglary shall be punished by confinement and hard labor, if in the first degree, not less than ten years nor more than twenty-one years; if in the second degree, not less than five nor more than ten years; if in the third degree, not exceeding five years. [G. S. 1868, ch. 31, § 71, Oct. 31.]

(2201) Burglary and larceny. § 72. If any person, in committing burglary, shall also commit a larceny, he may be prosecuted for both offenses in the same count, or in separate counts of the same indictment; and on conviction of such burglary and larceny shall be punished by confinement and hard

labor, in addition to the punishment hereinbefore prescribed for the burglary, not exceeding five years. [G. S. 1868, ch. 31, § 72, Oct. 31.]

(*State v. Groning*, 33 K. 18; *State v. Brandon*, 7 K. 106.)

(2202) Robbery; first degree. § 73. Every person who shall be convicted of feloniously taking the property of another from his person or in his presence, and against his will, by violence to his person or by putting him in fear of some immediate injury to his person, shall be adjudged guilty of robbery in the first degree. [G. S. 1868, ch. 31, § 73, Oct. 31.]

(*State v. McAnulty*, 26 K. 533; *State v. Segermond*, 40 K. 107; *State v. Barnett*, 3 K. 250.)

(2203) Second degree. § 74. Every person who shall be convicted of feloniously taking the personal property of another in his presence, or from his person, which shall have been delivered or suffered to be taken through fear of some injury to his person or property, or to the person of any relative or member of his family, threatened to be inflicted at some different time, which fear shall have been produced by the persons so receiving or taking such property, shall be adjudged guilty of robbery in the second degree. [G. S. 1868, ch. 31, § 74, Oct. 31.]

(2204) Third degree. § 75. If any person shall, either verbally or by a written or printed communication, accuse or threaten to accuse another of any felony, or other crime, or threaten to do any injury to the person or property of anyone, with a view or intent to extort or gain any money or property of any description, belonging to another, and shall, by intimidating him with said accusation or threat, extort or gain from him any money or property, every such offender shall be deemed guilty of robbery in the third degree. [G. S. 1868, ch. 31, § 75, Oct. 31.]

(2205) Punishment for robbery. § 76. Every person convicted of robbery shall be punished by confinement and hard labor, if in the first degree, not less than ten years nor more than twenty-one years; if in the second degree, not exceeding

ten nor less than five years; if in the third degree, not exceeding five years. [G. S. 1868, ch. 31, § 76, Oct. 31.]

(2206) Threatening letters. § 77. Every person who shall knowingly send or deliver, or shall make, and, for the purpose of being delivered or sent, shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark, or other designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of anyone, with a view or intent to extort or gain any money or property of any description, belonging to another, shall on conviction be adjudged guilty of an attempt to rob, and shall be punished by confinement and hard labor not exceeding five years. [G. S. 1868, ch. 31, § 77, Oct. 31.]

(2207) Grand larceny. § 78. Every person who shall be convicted of feloniously stealing, taking and carrying away any money, goods, rights in action, or other personal property or valuable thing whatsoever, of the value of twenty dollars or more, or any horse, mare, gelding, colt, filly, ass, mule, neat cattle, sheep or hog, belonging to another, shall be deemed guilty of grand larceny. [G. S. 1868, ch. 31, § 78, Oct. 31.]

(State v. Dorsey, 37 K. 226; State v. Buckles, 26 K. 237; State v. Stewart, 24 K. 250; State v. Henry, 24 K. 457; State v. Ingram, 16 K. 14; State v. Taylor, 15 K. 420; State v. Kellerman, 14 K. 135; State v. Cassady, 12 K. 550; Stevens v. Perrier, 12 K. 300; Harrington v. Miles, 11 K. 480; Bauer v. Clay, 8 K. 580; State v. Brandon, 7 K. 106; Lewis v. State, 4 K. 296.)

(2208) Punishment for. § 79. Persons convicted of grand larceny shall be punished in the following cases as follows: *First*, for stealing a horse, mare, gelding, colt, filly, neat cattle, mule or ass, by confinement and hard labor not exceeding seven years; *second*, in all cases of grand larceny, except as provided in the two succeeding sections, by confinement and hard labor not exceeding five years. [G. S. 1868, ch. 31, § 79, as amended by Laws 1870, ch. 62, § 1, March 17.]

(2209) Bank officer receiving deposits, etc. § 79a. If any president, director, manager, cashier, or other officer of any

banking institution, or any private banker or officer of a private bank doing business in this state, shall receive or assent to the reception of any deposit of money or other valuable thing in such bank or banking institution, or if any such banker, officer or agent shall create or assent to the creation of any debts or indebtedness by such bank or banking institution, in consideration or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances, he shall be deemed guilty of larceny, and upon conviction thereof shall be punished in the manner and to the same extent as is provided by law for stealing the same amount of money deposited, or valuable thing, if loss occur by reason of such deposit. [Laws 1879, ch. 48, § 1, March 18.]

(2210) Petty larceny. § 80. Every person who shall steal, take, and carry away any money or personal property or effects of another, under the value of twenty dollars, (not being the subject of grand larceny, without regard to value,) shall be deemed guilty of petty larceny, and on conviction shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 80, Oct. 31.]

(2211) The same. § 80a. That if any person or persons shall maliciously or mischievously enter the inclosure of any person and pick, destroy or carry away any apples, pears, peaches, plums, grapes or other fruit of any tree, shrub, bush or vine, he shall be deemed guilty of petty larceny, and on conviction thereof shall be punished as provided by section 80, chapter 31, General Statutes of 1868, approved March 3, 1868. [Laws 1871, ch. 88, § 1, March 2.]

(2212) Larceny in railway depot, etc. § 80b. If any larceny be committed in any railway depot, station-house, telegraph office, passenger coach, baggage, express or freight car, or any caboose, on any railway in this state, the offender may be punished by confinement and hard labor not exceeding seven years. [Laws 1871, ch. 121, § 3, March 16.]

(2213) Larceny in dwelling-house. § 81. If any larceny be committed in a dwelling-house, or in any boat or vessel, or by stealing from the person in the night-time, the offender may be punished by confinement and hard labor not exceeding seven years. [G. S. 1868, ch. 31, § 81, Oct. 31.]

(2214) Evidence of value of paper securities. § 82. If the property stolen consist of any bond, covenant, note, bill of exchange, draft, order or receipt, or any other evidence of debt, or of any public security issued by the United States or this state, or of any instrument whereby any demand, right or obligation shall be assigned, transferred, created, increased, released, extinguished, or diminished, the money due thereon or secured thereby, and remaining unsatisfied, which in any event or contingency might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be presumptive evidence of the value of the article stolen. [G. S. 1868, ch. 31, § 82, Oct. 31.]

(State v. Tilney, 38 K. 714; State v. Henry, 24 K. 457.)

(2215) Instances of larceny. § 83. If any person mark or brand, or alter the mark or brand of any animal, the subject of larceny, being the property of another, with intent to steal or convert the same to his own use, or shall willfully kill such animal with intent to steal or convert to his own use the carcass or skin, or any part of the animal so killed, he shall be adjudged guilty of larceny, and punished in the same manner as if he had feloniously stolen such animal. [G. S. 1868, ch. 31, § 83, Oct. 31.]

(2216) Stealing or embezzling instrument. § 84. If any person steal or embezzle any will of real or personal property, or any deed or other instrument of writing, being or purporting to be the act of another, by which any right or interest in real or personal property shall be or purport to be assured, transferred or conveyed, or in any way changed or affected, shall be adjudged guilty of grand larceny, without reference to the value of the instrument so stolen or embezzled, and shall be punished by confinement and hard labor not exceeding five years,

or in the county jail not less than six months. [G. S. 1868, ch. 31, § 84, Oct. 31.]

(*In re Dill*, 32 K. 681; *In re Payson*, 23 K. 757.)

(2217) Record or instruments filed. § 85. Whoever shall be convicted of having stolen and carried away or embezzled any record, paper or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, document or record, filed or deposited in any public office or with any judicial officer, shall be adjudged guilty of grand larceny, without reference to the value of the record, paper, document or proceeding so stolen or embezzled, and shall be punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months. [G. S. 1868, ch. 31, § 85, Oct. 31.]

(2218) Withdrawing or destroying papers. § 86. Every officer or other person having the custody of any record, paper, document or proceeding, or any will, deed or other writing, specified in either of the last two sections, who shall fraudulently take away, withdraw or destroy any such record, paper, document, proceeding, will, deed, or instrument of writing, filed or deposited with him or left in his custody, shall upon conviction be punished by confinement and hard labor not exceeding five years. [G. S. 1868, ch. 31, § 86, Oct. 31.]

(2219) Instances of larceny. § 87. If any person shall sever from the soil of another any produce growing thereon, or shall sever from any building, or from any gate, fence, or other railing or inclosure, or any part thereof, or any material of which it is composed, and shall take and convert the same to his own use, with the intent to steal the same, he shall be deemed guilty of larceny in the same manner and of the same degree as if the articles so taken had been severed at some different and previous time. [G. S. 1868, ch. 31, § 87, Oct. 31.]

(*Haag v. Cooley*, 33 K. 367, 368.)

(2220) Embezzling by clerks, servants, agents, etc. § 88. Any clerk, apprentice or servant of any private person,

or of any copartnership, except clerks, apprentices or servants within the age of sixteen years, or any trustee of an express trust, or any executor or administrator of any estate, or the guardian of the property of any minor, habitual drunkard, or person of unsound mind, or any officer, clerk, agent or servant of any corporation or joint-stock association, or any person employed in such capacity, or any officer of this state, or any county, township, city, or school district or road district therein, who shall embezzle or convert to his own use, or shall take, make way with or secrete, with intent to convert to his own use, without the assent of his employer, any money, bank bills, treasury notes, goods, rights in action, or valuable security or effects whatsoever, belonging to any such person, copartnership, corporation, joint-stock association, estate, minor, habitual drunkard, person of unsound mind, state, county, city, township, or school district or road district, or the beneficiary of such trust fund, which shall have come into his possession or under his care by virtue of such employment, office, or trust, shall upon conviction thereof be punished in the manner prescribed by law for stealing property of the kind or value of the articles so embezzled, taken, or secreted; or if any agent shall neglect or refuse to deliver to his employer or employers, on demand, any money, bank bills, treasury notes, promissory notes, evidences of debt, or other property which may or shall have come into his possession by virtue of such employment, office, or trust, after deducting his reasonable or lawful fees, charges or commissions for his services, unless the same shall have been lost by means beyond his control, before he had opportunity to make delivery thereof to his employer or employers, or the employer or employers have permitted him to use the same, he shall upon conviction thereof be punished in the manner provided in this section for unlawfully converting such money or other property to his own use. [Laws 1873, ch. 83, § 1, as amended by Laws 1881, ch. 104, § 1, May 10.]

(Parli v. Reed, 30 K. 534; State v. Spaulding 24 K. 1; State v. Bancroft, 22 K. 170; State v. Lillie, 21 K. 728; State v. Smith, 13 K. 274, 299; State v. Graham, 13 K. 299; McLaughlin v. State, 10 K. 581.)

(2221) Prosecutions pending. § 88*a*. No prosecution now pending under section one of chapter eighty-three of the Session Laws of 1873 shall be affected by the provisions of this act, but all such prosecutions shall be carried on and conducted to final judgment under such section one, in the same manner as if said section had not been amended or repealed. [Laws 1881, ch. 104, § 2, May 10.]

(2222) Explanatory. § 88*b*. The words "incorporation" and "corporation," as used in chapter eighty-three of the Laws of eighteen hundred and seventy-three, shall be construed and held to include the state of Kansas, and all municipal corporations therein. [Laws 1879, ch. 90, § 1, March 15.]

(2223) Embezzlement of evidence of debt. § 89. Every embezzlement of any evidence of debt, negotiable by delivery only, and actually executed by the master or employer of such clerk, agent, officer or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of the last preceding section, and punished accordingly. [G. S. 1868, ch. 31, § 89, Oct. 31.]

(2224) Embezzlement by bailee. § 90. If any carrier or other bailee shall embezzle or convert to his own use, or make way with or secrete, with intent to embezzle or convert to his own use, any money, goods, rights in action, property, or valuable security, or other effects which shall have been delivered to him or shall have come into his possession or under his care as such bailee, although he shall not break any trunk, package, box or other thing in which he received them, he shall upon conviction be adjudged guilty of larceny, and punished in the manner prescribed by law for stealing property of the nature or value of the article so embezzled, taken, or secreted. [G. S. 1868, ch. 31, § 90, Oct. 31.]

(State v. Small, 26 K. 209.)

(2225) By tenant or lodger. § 91. If any tenant or lodger shall take away, with intent to embezzle, steal or purloin any bedding, furniture, goods, or chattels or fixture, which by

contract was let to him, to be used by him in or with any house, apartment, room, or lodging, whether the contract for letting shall have been made by such person or by any person on his behalf, he shall be adjudged guilty of larceny, and punished in the same manner prescribed by law for stealing property of the value of the articles so stolen, purloined, or embezzled. [G. S. 1868, ch. 31, § 91, Oct. 31.]

(2226) Buying or receiving stolen property. § 92. Every person who shall buy, or in any way receive any goods, money, rights in action, personal property, or any valuable security or effects whatsoever, that shall have been embezzled, taken or secreted, contrary to the provisions of the last four sections, or that shall have been stolen from another, knowing the same to have been so embezzled, taken or secreted, or stolen, shall upon conviction be punished in the same manner and to the same extent as for stealing the money, property, or other thing so bought or received. [G. S. 1868, ch. 31, § 92, Oct. 31.]

(*State v. McLaughlin*, 35 K. 650.)

(2227) Conviction of principal not necessary. § 93. In any indictment for any offense specified in the last section, it shall not be necessary to aver, nor on the trial thereof to prove, that the principal who embezzled, took, secreted or stole such property has been convicted. [G. S. 1868, ch. 31, § 93, Oct. 31.]

(2228) False pretenses. § 94. Every person who, with intent to cheat or defraud another, shall, designedly, by means of any false token or writing, or by any other false pretenses, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right in action, or any other valuable thing or effects whatsoever, upon conviction thereof shall be punished in the same manner and to the same extent as for feloniously stealing the money, property or thing [so] obtained. [G. S. 1868, ch. 31, § 94, Oct. 31.]

(*State v. Palmer*, 40 K. 474; *In re Schurman*, 40 K. 533; *State v. Metsch*, 37 K. 222; *State v. Decker*, 36 K. 717; *In re Dill*, 32 K. 682; *State v. Cowden*,

28 K. 269; *State v. Lewis*, 26 K. 123; *In re Payson, Petitioner*, 23 K. 757; *In re Snyder*, 17 K. 542.)

(2229) Punishment in certain cases. § 95. If the false token by which any signature, money, property, right in action, or other thing shall be obtained, as specified in the last section, be a promissory note, bill of exchange, check, or evidence of debt, purporting to have been made or issued by or under authority of any banking company or corporation not in existence, the person convicted of such cheat may be punished by confinement and hard labor not exceeding seven years. [G. S. 1868, ch. 31, § 95, Oct. 31.]

(2230) Defendant convicted of larceny. § 96. If, upon the trial of any person indicted for any offense prohibited in the last two sections, it shall be proved that he obtained the property or other thing in question in such manner as to amount in law to a larceny, he shall not by reason thereof be entitled to an acquittal, but he shall be convicted and punished as if the offense had been proved as charged. [G. S. 1868, ch. 31, § 96, Oct. 31.]

(2231) Falsely personating another. § 97. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money, goods, rights in action, or property or effects of any description, belonging or intended to be delivered to the individual so personated, shall upon conviction be punished in the same manner and to the same extent as for feloniously stealing the money, property or other thing so received. [G. S. 1868, ch. 31, § 97, Oct. 31.]

(2232) Fraudulent conveyances. § 98. Every person who, being a party to any conveyance or assignment of any estate or interest in real estate, goods, or things in action, of any rents or profits issued therefrom, or to any charge upon such estate, interest, rents or profits made or created, with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy or knowing of any such conveyance, assignment, or charge, who shall willingly put the same in use as having been made in good

faith, shall upon conviction be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 98, Oct. 31.]

(Clark v. Akers, 16 K. 166; Dodd v. Hills, 21 K. 707; Howe Machine Co. v. Lincoln, 24 K. 126.)

(2233) Second deed, mortgage, etc. § 99. Every person who shall make, execute or deliver any deed or writing for the conveyance or assurance of any lands, tenements or hereditaments, goods or chattels, which he had previously, by deed or writing, sold, conveyed, mortgaged or assured, or covenanted to convey or assure to any other person, such first deed being outstanding and in force, and shall not, in such second deed or writing, recite or describe such former deed or writing, or the substance thereof, with intent to defraud, and every person who shall knowingly take or receive such second deed or writing, shall on conviction be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 99, Oct. 31.]

(Howe Machine Co. v. Lincoln, 24 K. 123.)

(2234) Destroying boat or vessel. § 100. If any person shall unlawfully and maliciously destroy or injure any boat or vessel, or any engine or machinery for propelling the same, whether the same be completed or in an unfinished state, or shall unlawfully or maliciously cast away or strand, or in anywise injure any boat or vessel, with intent thereby to injure or prejudice any owner or part owner of such boat or vessel, or of any goods on board the same, or the insurer of such boat or vessel, or on the freight thereof, or upon any goods on board the same, the person so offending shall be punished by confinement and hard labor not exceeding seven years. [G. S. 1868, ch. 31, § 100, Oct. 31.]

(2235) Poison to animals. § 101. Every person who shall willfully administer any poison to any domestic animal, or shall maliciously expose any poisonous substance with the intent that the same shall be taken or swallowed by any domestic animal, shall upon conviction be punished by confinement and hard labor not exceeding three years, or in the county jail not less than twelve months: *Provided*, That the provisions of this

section shall not apply to persons exposing poison upon their premises for the purpose of destroying predatory dogs or wolves. [G. S. 1868, ch. 31, § 101, as amended by Laws 1876, ch. 74, § 1, March 8.]

(2236) Killing or wounding animals. § 102. Every person who shall willfully and maliciously kill, maim, or wound any domestic animal of another, shall upon conviction be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 102, as amended by Laws 1872, ch. 123, § 1, June 20.]

(2237) Railroad tracks, bridges, etc. § 103. Any person or persons who shall willfully remove, break, displace, throw down, destroy, or in any manner injure any iron, wooden or other rail, or other branches or branch ways, or any part of the tracks, or any bridge, viaduct, culvert, embankment, parapet, switch or other fixtures, or any part thereof attached to or connected with the track or tracks of any railroad in this state, now in operation, or in the course of construction, or which shall hereafter be constructed, or put in operation, or who shall willfully place any obstruction upon the rails or track of any such railroad, shall on conviction thereof be punished by confinement and hard labor in the penitentiary not more than ten years nor less than one year: *Provided, however,* That if any person or persons shall, by the commission of either of the aforesaid acts or offenses, occasion the death of any person or persons, the person or persons so offending shall be deemed guilty of murder in the first or second degree, or manslaughter, according to the nature of the offense, and on conviction thereof shall be punished as in other cases. [G. S. 1868, ch. 31, § 103, Oct. 31.]

(2238) Injuring rails, sills, etc. § 104. Any person who shall willfully throw down, break, remove, displace, cut, split, burn, or in any manner destroy or injure any of the rails, sills, switches, cross-ties, piles, bridges, culverts, viaducts, parapets, or any other fixture of any railroad, or shall willfully injure or destroy any embankment of any railroad within this state, now constructed or in process of construction, or of any railroad which

shall hereafter be constructed, or be in process of construction in this state, shall on conviction thereof be punished by confinement and hard labor in the penitentiary not less than one nor more than three years. [G. S. 1868, ch. 31, § 104, Oct. 31.]

(2239) Injuring locomotive, car, etc. § 105. Every person who shall willfully cut, break, burn, injure or destroy any locomotive, car, or other machinery which now is, or which may hereafter be in use upon any railroad in this state, or any wood-house, car, or water station, erected for the accommodation and use of any railroad within this state, shall on conviction thereof be punished by confinement and hard labor in the penitentiary not less than one nor more than three years. [G. S. 1868, ch. 31, § 105, Oct. 31.]

(2240) Aiding or abetting. § 106. Every person who shall willfully counsel, advise or assist, aid or abet any other person in commission of any of the offenses named in the three preceding sections of this act, shall upon conviction thereof be punished in the same manner as the principal offender would have been upon conviction: *Provided*, That any railroad company whose property shall be destroyed or injured by any of the acts or offenses mentioned in the three aforesaid sections, or any person who shall be injured by any of the acts aforesaid, shall have a right of action against any person or persons committing any of the acts or offenses mentioned in the said three sections of this act; and such person or persons committing any of such acts or offenses shall be liable for all damages so sustained. [G. S. 1868, ch. 31, § 106, Oct. 31.]

(2241) Malicious trespasses. § 107. Every person who shall willfully, unlawfully and maliciously break, destroy or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom or from any gate, fence, or inclosure, or any part thereof, any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or shall pull down, injure or destroy any gate, post, railing, or fence, or any part thereof, or cut down,

lop, girdle or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall on conviction be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 107, Oct. 31.]

(State v. Haney, 32 K. 428; Felter v. Manville, 23 K. 191; State v. Gurnee, 14 K. 111.)

(2242) Injury to raft, etc. § 108. Every person who shall willfully and maliciously burn, injure or destroy any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut, break, injure, sink or set adrift any boat, canoe, skiff, or other vessel, being the property of another, shall be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 108, Oct. 31.]

(2243) Injury to mill-dams, bridges, etc. § 109. Every person who shall willfully and maliciously cut down, injure, break or destroy any bridge or mill-dam, or other dam erected to create hydraulic power, or any embankment necessary to support such dam, or shall willfully or maliciously make or cause to be made any aperture in such dam or embankment, with intent to destroy or injure the same, and every person who shall erect a dam upon any stream upon which a dam for a mill or other manufacturing purposes is in operation, or shall willfully and maliciously place any obstruction on such stream with the intent thereby of backing the water upon any dam already erected, or shall willfully or maliciously obstruct the running of said mill or other manufactory by lessening the water power thereof, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 109, as amended by Laws 1874, ch. 71, § 1, March 25.]

(2244) Removing, defacing or altering landmarks. § 110. Every person who shall willfully and maliciously either: *First*, remove any monument of stone or other durable material, created for the purpose of designating the corner or any

other point in the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof; or, *second*, deface or alter the marks upon any tree, post, or other monument, made for the purpose of designating any point in such boundary; or, *third*, cut down or remove any tree upon which any such marks shall be made for such purpose, with intent to destroy such marks, shall upon conviction be adjudged guilty of a misdemeanor. [G. S. 1868, ch. 31, § 110, Oct. 31.]

(2245) Milestones. § 111. Every person who shall willfully or maliciously break, or destroy, or remove any milepost, milestone, or any guideboard, erected by authority of law, on any public highway or road, or shall willfully and maliciously deface or alter any inscription on any such post, stone or board, shall be deemed guilty of a misdemeanor. [G. S. 1868, ch. 31, § 111, Oct. 31.]

(2246) Punishment under preceding eight sections. § 112. Every punishment and forfeiture imposed on any person maliciously committing any offense prohibited by the provisions of either of the last eight preceding sections, shall equally apply and be in force, whether the offense shall be committed from malice conceived against the owner of the property in respect to which it shall be committed, or otherwise. [G. S. 1868, ch. 31, § 112, Oct. 31.]

(2247) Misdemeanors, how punished. § 113. Every person who shall be convicted of a misdemeanor, as prohibited by this article, the punishment for which is not hereinbefore prescribed, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 113, Oct. 31.]

ARTICLE 4.—OFFENSES AFFECTING RECORDS, CURRENCY, WRITTEN INSTRUMENTS, AND SECURITIES.

(2248) Forgery in first degree. § 114. Every person who shall forge, counterfeit, or falsely alter, or cause or procure to be forged, counterfeited, or falsely altered—

First, Any will of real or personal property, or any deed or

other instrument, being or purporting to be the act of another, by which any right or interest in real property shall be or purport to be transferred, or in any way changed or affected; or,

Second, Any certificate of the acknowledgment or proof of any deed or other instrument which by law may be recorded, made or purporting to have been made by any court or officer duly authorized to make such certificate or indorsement; or,

Third, Any certificate of the proof of any will of real or personal property which by law may be recorded, made or purporting to have been made by any officer authorized to make such certificate; or,

Fourth, Any certificate or indorsement of the filing or recording any such will, deed or other instrument which by law may be recorded, or purporting to have been made by any officer authorized to make such certificate or indorsement, with intent to defraud, shall on conviction be adjudged guilty of forgery in the first degree. [G. S. 1868, ch. 31, § 114, Oct. 31.]

(Howell v. McCrie, 36 K. 636.)

(2249) The same. § 115. Every person who shall falsely make, alter, forge, counterfeit, print or photograph, or cause or procure to be falsely made, altered, forged, counterfeited, printed or photographed —

First, Any warrant, order, bill, bond, certificate or other public security, issued or purporting to have been issued under the authority of this state, or of any county, township, school district or municipal corporation therein, by virtue of any law of this state, by which the payment of any money, absolutely or upon a contingency, shall be promised, or the receipt of any money, goods or valuable thing shall be acknowledged, or shall purport to be receivable in payment of the state, or of any county organized or unorganized, or of any township, school district, or other municipal corporation therein; or,

Second, Any certificate of any share or interest in any public stock, created by virtue of any law of this state, issued or

purporting to have been issued by any public officer, or any bond or other evidence of any debt of this state, or any county organized or unorganized, township, school district or municipal corporation therein, either absolute or contingent, made or issued, or purporting to have been made or issued by any public officer; or,

Third, Any indorsement, assignment or other instrument transferring or purporting to transfer the right or interest of any holder of such right or interest, with the intent to defraud this state, or any organized or unorganized county, township, school district, or other municipal corporation therein, or any person thereof, or any public officer of the state or county, or other person, shall on conviction be adjudged guilty of forgery in the first degree. [G. S. 1868, ch. 31, § 115, as amended by Laws 1876, ch. 73, § 1, May 1.]

(2250) Second degree. § 116. Every person who shall forge or counterfeit, or cause or procure to be forged or counterfeited, the seal of this state, the seal of any court of record, or the seal of any public office authorized by law, the seal of any officer by law entitled to have and use an official seal, or the seal of any body corporate, duly incorporated by or under the laws of this state, or who shall make, or forge, or counterfeit any impression purporting to be the impression of any such seal, with intent to defraud, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 116, Oct. 31.]

(2251) The same. § 117. Every person who, with intent to defraud, shall falsely make, alter, destroy, corrupt or falsify, or procure to be falsely made, altered, destroyed, corrupted or falsified —

First, Any record of any will, conveyance or other instrument, the record or the copy of the record of which by law shall be evidence; or,

Second, Any record of any judgment or decree of any court of record; or,

Third, Any entry in any book, record, journal, or account book, required or authorized by the laws of this state to be kept by any county, township or school-district clerk, or other public officer, or by any officer of this state, or of any county or other municipal corporation, or school district; or,

Fourth, The return of any officer, court or tribunal to any order, writ or process of any court, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 117, as amended by laws 1876, ch. 73, § 2, May 1.]

(2252) The same. § 118. Every person who shall falsely make, forge or alter, or cause or procure to be falsely made, forged or altered, any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, with intent to defraud, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 118, Oct. 31.]

(2253) The same. § 119. If any person authorized to take the proof or acknowledgment of any conveyance of real estate, or of any instrument which may by law be recorded, shall either—*First*, willfully certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth no such acknowledgment was made; or, *second*, willfully certify that any conveyance or instrument was proved, when in fact no such proof was made; or, *third*, willfully certify falsely in any material matter contained in any certificate, being or purporting to be a certificate of acknowledgment or proof of any such conveyance or instrument, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 119, Oct. 31.]

(Howell v. McCrie, 36 K. 636.)

(2254) The same. § 120. Every person who shall counterfeit, or cause or procure to be counterfeited, any gold or silver coin, at the time current within this state, by law or usage, or in actual use or circulation within this state, or shall make or cause to be made any false or counterfeit coin, in imitation or simili-

tude of any gold or silver coin so current, or in actual use or circulation within this state, shall on conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 120, Oct. 31.]

(2255) The same. § 121. Every person who shall forge or counterfeit, or falsely make or alter, or cause or procure to be forged, counterfeited, or falsely made or altered—*First*, any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, being or purporting to be made or issued by any bank incorporated under the laws of the United States or this State, or of any other state or territory, government, or country; *second*, any order or check, being or purporting to be drawn on any such incorporated bank, or any cashier thereof, by any other person, company, or corporation; *third*, any notes or bonds issued by the United States, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 121, Oct. 31.]

(State v. Foster, 30 K. 365, 366.)

(2256) The same. § 122. Every person who shall sell, exchange, or deliver, or offer to sell, exchange or deliver, or receive upon a sale, exchange or delivery, for any consideration, any falsely made, altered, forged or counterfeited note, check, bill, draft, or other instrument, the falsely making, altering, forging or counterfeiting of which is, by the last section, declared to be an offense, knowing the same to be falsely made, altered, forged, or counterfeited, with the intent to have the same altered or passed, shall be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 122, Oct. 31.]

(State v. Foster, 30 K. 366.)

(2257) The same. § 123. Every person who shall bring into this state or have in his possession or custody, any falsely made, altered, forged or counterfeited note, bill, check, draft, or other instrument, the falsely making, altering, forging or counterfeiting of which is, by the one hundred and twenty-first section of this act, declared to be an offense, knowing the same to

be falsely made, altered, forged, or counterfeited, with the intent to utter, pass, sell, or exchange the same, as true or false, or cause the same to be passed, uttered, sold, or exchanged, with intent to defraud, shall on conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 123, Oct. 31.]

(2258) The same. § 124. Every person who shall either—

First, Make or engrave, or cause or procure to be made or engraved, any plate, in the form or similitude of any notes or bonds issued by the United States, or any promissory note, bill of exchange, draft or order, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this state, or by any bank incorporated under the laws of the United States, or of any state or territory thereof, or under the laws of any foreign country or government, without the authority of such bank; or,

Second, Have or keep in his custody or possession any such plate, without the authority of the United States or of such bank, with the intent of using or having the same used for the purpose of taking therefrom any impression to be passed, sold, or uttered; or,

Third, Make or cause to be made, or have or keep in his custody or possession, any plate upon which shall be engraved any figures or words intended or adapted to, or which may be used for the purpose of falsely altering any evidence of debt, issued by any such incorporated bank, with the intent of using or having the same used for that purpose; or,

Fourth, Make or cause to be made, or have or keep in his custody or possession, without the authority of such bank, any impression taken from any such plate, with the intent to fill up and complete, or to have the same filled up and completed, or sold, passed, or uttered, shall upon conviction be adjudged guilty of forgery in the second degree. [G. S. 1868, ch. 31, § 124, Oct. 31.]

(*Riggins v. State*, 4 K. 173.)

(2259) Deemed in form of genuine. § 125. Every plate specified in the last section shall be deemed to be in the form

and similitude of the genuine instrument, in either of the following cases: *First*, when the engraving on any such plate, or any impression therefrom, resembles and conforms to such parts of the genuine instrument as are engraved; or, *second*, where such plate shall be partly finished, and the part so finished, or any impression therefrom, resembles and conforms to similar parts of the genuine instrument. [G. S. 1868, ch. 31, § 125, Oct. 31.]

(2260) Third degree. § 126. Every person who shall bring into this state or have in his custody or possession any counterfeit or imitation of gold or silver coin, the counterfeiting of which is hereinbefore declared to be an offense, knowing the same to be counterfeited, with intent to defraud or injure, by uttering the same as true or false, or by causing the same to be uttered, shall upon conviction be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 126, Oct. 31.]

(2261) Imitation of coin. § 127. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon any sale, exchange or delivery, any such counterfeit or imitation of any gold or silver coin, specified in the last section, knowing the same to be counterfeited, with the intent to have the same uttered or passed, shall be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 127, Oct. 31.]

(2262) Instrument in writing. § 128. Every person who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit any instrument or writing, being or purporting to be any process issued by any competent court or magistrate or officer, or any pleading or proceeding filed or entered in any court of law or equity, or any certificate, order, or allowance, by any competent court or officer, or any license or authority authorized by any statute, shall on conviction be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 128, Oct. 31.]

(2263) The same. § 129. Every person who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit any instrument or writing, being or purporting to be the act

of another, by which any pecuniary demand or obligation shall be or purport to be transferred, created, increased, discharged, conveyed, or diminished, or by which any rights or property whatsoever shall be or purport to be transferred, conveyed, discharged, increased, or in any manner affected, the falsely making, altering, forging or counterfeiting of which is not hereinbefore declared to be a forgery in some other degree, shall on conviction be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 129, Oct. 31.]

(State v. Gavigan, 36 K. 322; State v. Hilton, 35 K. 338; State v. Lee, 32 K. 360.)

(2264) Entry in books of account. § 130. Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in a book of accounts kept in the office of the state auditor, or in the office of the state treasurer, or of any county treasurer, or of the treasurer of any township or incorporated city or town, by which any demand or obligation, claim, right or interest, either against or in favor of this state or any county, township, or incorporated city or town, or any individual, shall be or shall purport to be created, increased, discharged, diminished, or in any manner affected, shall upon conviction be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 130, Oct. 31.]

(2265) The same. § 131. Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in any book of accounts kept by any moneyed corporation within this state, or in any book of accounts kept by such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit shall be or shall purport to be created, increased, diminished or discharged, or in any manner affected, shall upon conviction be adjudged guilty of forgery in the third degree. [G. S. 1868, ch. 31, § 131, Oct. 31.]

(2266) Forgery in fourth degree. § 132. Every person who shall have in his possession, buy or receive, any falsely

made, altered, forged or counterfeited instrument or writing, the forgery of which is hereinbefore declared to be an offense (except such as are enumerated in the one hundred and twenty-first section of this act), knowing the same to be forged, counterfeited, or falsely made or altered, with intent to injure or defraud, by uttering the same as true or false, or causing the same to be uttered, shall on conviction be adjudged guilty of forgery in the fourth degree. [G. S. 1868, ch. 31, § 132, Oct. 31.]

(2267) The same. § 133. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, for any consideration, any falsely altered, forged or counterfeited instrument of writing, the forgery of which is declared punishable (except as in the last section is excepted), knowing the same to be forged, counterfeited, or falsely altered, with the intention to have the same uttered or passed, shall on conviction be adjudged guilty of forgery in the fourth degree. [G. S. 1868, ch. 31, § 133, Oct. 31.]

(State v. Lee, 32 K. 360.)

(2268) Passing counterfeit coin. § 134. Every person who, with intent to defraud, shall pass, utter, or publish, or offer or attempt to pass, utter, or publish, as true, any forged, counterfeited or falsely-uttered instrument or writing, or any counterfeit or any imitation of any gold or silver coin, the altering, forging or counterfeiting of which is hereinbefore declared to be an offense, knowing such instrument, writing or coin to be altered, forged, or counterfeited, shall upon conviction be adjudged guilty of forgery in the same degree hereinbefore declared for the forging, altering or counterfeiting the instrument, writing or coin so passed, uttered, or published, or offered or attempted to be passed, uttered, or published. [G. S. 1868, ch. 31, § 134, Oct. 31.]

(State v. Foster, 30 K. 365.)

(2269) Possession of forged warrant, etc. § 134a. Every person who shall have in his possession any falsely-made, altered, forged, counterfeited, printed, or photographed,

any warrant, order, bill, land certificate, or other public security issued or purporting to have been issued under the authority of this state, or of any organized or unorganized county, township, school district or other municipal corporation therein, knowing the same to have been falsely made, altered, forged, counterfeited, printed, or photographed, shall upon conviction be adjudged guilty of forgery in the fourth degree. [Laws 1876, ch. 73, § 3, May 1.]

(2270) Sufficient indictment, etc. § 134*b*. In any indictment or information for falsely making, altering, forging, counterfeiting, printing and photographing, or for causing or procuring the same to be done, or for selling exchanging, or delivering, or offering to sell, exchange, or deliver, for any consideration, or for having in possession any falsely made, altered, forged or counterfeited instrument or writing, the forgery, falsely making, altering, counterfeiting, printing or photographing of which is declared punishable, or any indorsement, assignment or transfer of any instrument hereinbefore described, it shall be sufficient to set forth the purport and value thereof. [Laws 1876, ch. 73, § 4, May 1.]

(2271) Laws repealed; proviso. § 134*c*. That original sections one hundred and fifteen and one hundred and seventeen of article four, chapter thirty-one of the General Statutes of eighteen hundred and sixty-eight, of which this is amendatory, are hereby repealed: *Provided*, That all prosecutions heretofore commenced or hereafter to be commenced, for any violation of sections one hundred and fifteen and one hundred and seventeen of this act, shall be prosecuted to final judgment, and the defendant or defendants punished the same as if this act had not been passed. [Laws 1876, ch. 73, § 5, May 1.]

(2272) Obliteration of writings. § 135. The total erasure, destruction or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to money, right in action or property, shall be or purport to be, or shall be intended to be created,

conveyed, transferred, increased, discharged, diminished, or in any manner affected, shall be deemed forgery in the same manner and in the same degree as the false alteration of the whole or any part of such instrument or writing. [G. S. 1868, ch. 31, § 135, Oct. 31.]

(2173) Connecting parts. § 136. When different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be deemed forgery in the same manner and in the same degree as if the parts so put together were falsely made or forged. [G. S. 1868, ch. 31, § 136, Oct. 31.]

(2274) Deemed written instrument, etc. § 137. Every instrument, partly printed and partly written, or wholly printed, with a written signature thereto, and every signature of an individual, firm or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing and written instrument, within the meaning of the provisions of this act. [G. S. 1868, ch. 31, § 137, Oct. 31.]

State v. Lee, 32 K. 360; *State v. Hilton*, 35 K. 338; *Riggins v. State*, 4 K. 173.)

(2275) Pretended signature. § 138. The false making, forging or counterfeiting of any evidence of debt or negotiable instrument, issued or purporting to have been issued by any corporation having authority for that purpose, to which shall be affixed the pretended signature of any person as an agent or officer of such corporation, shall be deemed a forgery, in the same degree and in the same manner as if such person was at the time an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence. [G. S. 1868, ch. 31, § 138, Oct. 31.]

(2276) Making false instruments, etc. § 139. The false making, forging or counterfeiting of any instrument or writing being or purporting to be the act of another, by which any pecuniary demand or obligation, or any right, interest or

claim to money, right in action or property, shall be or purport to be, or intend to be conveyed, transferred, created, increased, discharged, diminished, or in any manner affected, to which shall be affixed a fictitious name, or the name or pretended signature of any person not in existence, shall be deemed a forgery in the same degree and in the same manner as if the name so affixed was the name of a person in being, or purporting to be the signature of a person in existence. [G. S. 1868, ch. 31, § 139, Oct. 31.]

(State v. Gavigan, 86 K. 322; State v. Hilton; 85 K. 338.)

(2277) The same. § 140. If anyone shall, with intent to injure or defraud, make any instrument or writing (as in the last section specified) in his name, and shall utter or pass it under the pretense that it is the act of another who bears the same name, he shall upon conviction be adjudged guilty of forgery in the same degree as if he had forged the instrument in the name of the person bearing a different name from his own. [G. S. 1868, ch. 31, § 140, Oct. 31.]

(2278) Clipping coin, etc. § 141. Every person who, with intent to defraud, shall impair, falsely clip, scale, lighten or diminish any gold or silver coin, current by law or usage, or its actual use or circulation within this state, shall on conviction be adjudged guilty of forgery in the fourth degree. [G. S. 1868, ch. 31, § 141, Oct. 31.]

(2279) Punishment; several degrees of forgery. § 142. Persons convicted of forgery, as herein specified and declared, shall be punished as follows: *First*, those convicted of forgery in the first degree, by confinement and hard labor for a term not more than twenty-one years; *second*, those in the second degree, by confinement and hard labor not more than ten years; *third*, those in the third degree, by confinement and hard labor not exceeding seven years; *fourth*, those in the fourth degree, by confinement and hard labor not exceeding five years, or by imprisonment in the county jail not less than six months. [G. S. 1868, ch. 31, § 142, Oct. 31.]

(2280) Rolling-press, etc., for forging. § 143. Every person who shall form, make or mend, have or keep in his possession or custody, or sell, exchange or deliver to another, any paper rolling-press or other tool, instrument or material, devised, adapted or designed for the stamping, forging and making any false or counterfeit bill, note, certificate, or other negotiable evidence of debt, issued by any incorporated bank, as specified in the one hundred and twenty-first section of this act, or devised, adapted and designed for the falsely altering any such bill, note, draft, check, certificate, or other evidence of debt, of any such bank, with intent to use and employ the same, or cause or permit the same to be used or employed in the falsely making, altering, forging or counterfeiting any such bill, note, draft, check, or certificate, or other evidence of debt, shall upon conviction be punished as hereinbefore prescribed for forgery in the third degree. [G. S. 1868, ch. 31, § 143, Oct. 31.]

(2281) Casting, stamping, etc. § 144. If any person shall cast, stamp, engrave, form, make or amend, or shall begin to cast, stamp, engrave, form, make or amend, or shall knowingly have in his possession or custody, or shall sell, exchange or deliver to another, any mould, pattern, dye, puncheon, engine, press or other tool or instrument, devised, adapted or designed for the coining or making, edging, graining or lettering any false or counterfeit money or coin, in imitation or similitude of any gold or silver coin, current by law or usage, or in use or circulation within this state, with the intent to use and employ the same or procure or permit the same to be used or employed in coining or making, or edging, graining or lettering any such false and counterfeit coin, upon conviction shall be punished as hereinbefore prescribed for forgery in the fourth degree. [G. S. 1868, ch. 31, § 144, Oct. 31.]

(2282) Personating another. § 145. Every person who shall falsely represent or personate another, and in such assumed character shall either—*First*, become bail or security, or acknowledge any recognizance, or execute any bond or other in-

strument, as bail or security, for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or security; or, *second*, confess any judgment; or, *third*, acknowledge the execution of any conveyance of any real or personal property, or any other instrument which by law may be recorded; or, *fourth*, do any other act, in the course of a suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sum of money, or his rights or interests may be in any manner affected, shall on conviction be punished by confinement and hard labor not exceeding ten years. [G. S. 1868, ch. 31, § 145, Oct. 31.]

(2283) Destroying will; deed. § 146. If any person shall unlawfully, willfully and maliciously tear, cut, burn, or in any way whatever destroy any will, deed, or other instrument of writing, the falsely making, altering, forging or counterfeiting of which is hereinbefore declared to be a punishable offense, shall on conviction be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 146, Oct. 31.]

(2284) Mutilating or changing any act, etc. § 147. If any person shall mutilate, alter, or change, in any manner whatsoever, otherwise than in the regular course of legislation, any act, bill or resolution, introduced into or acted upon by either or both houses of the legislature of this state, or after such act, bill or resolution has been signed by the governor, shall be deemed guilty of a felony, and upon conviction shall be punished by confinement and hard labor for a period not less than one nor more than ten years. [G. S. 1868, ch. 31, § 147, Oct. 31.]

ARTICLE 5.—CRIMES AFFECTING THE ADMINISTRATION OF JUSTICE.

(2285) Perjury. § 148. Every person who shall willfully and corruptly swear, testify or affirm falsely to any material matter, upon any oath or affirmation, or declaration legally ad-

ministered in any cause, matter or proceeding, before any court, tribunal or public body or officer, shall be deemed guilty of perjury. [G. S. 1868, ch. 31, § 148, Oct. 31.]

(State v. Ayer, 40 K. 43; State v. Smith, 40 K. 681; State v. Bunker, 38 K. 737; State v. Lewis, 10 K. 157.)

(2286) Punishment for. § 149. Every person who shall be convicted of willful and corrupt perjury, shall be punished in the following cases as follows: *First*, for perjury committed on the trial of any indictment for a capital offense, with an express premeditated design to effect the condemnation and execution of the prisoner, death, or confinement and hard labor not less than ten years; *second*, for perjury committed on the trial of an indictment for a capital offense, without such design, or for any other felony, by confinement and hard labor not less than seven years; *third*, for perjury committed on any other trial or proceeding, or in any other case, by confinement and hard labor for a term not exceeding seven years. [G. S. 1868, ch. 31, § 149, Oct. 31.]

(2287) Subornation. § 150. Every person who shall procure any other person, by any means whatsoever, to commit any willful or corrupt perjury in any case, matter, or proceeding, in or concerning which such other person shall be legally sworn or affirmed, shall be adjudged guilty of subornation of perjury. [G. S. 1868, ch. 31, § 150, Oct. 31.]

(2288) Punishment for. § 151. Every person convicted of subornation of perjury shall be punished in the same manner as hereinbefore prescribed, upon a conviction of the perjury which shall have been so procured. [G. S. 1868, ch. 31, § 151, Oct. 31.]

(2289) Attempting to procure. § 152. Every person who shall, by the offer of any valuable consideration, attempt unlawfully and corruptly to procure or entice any other to commit willful and corrupt perjury in any cause, matter or proceeding, in or concerning which such other person might by law be sworn or affirmed, shall on conviction be punished by con-

finement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 152, Oct. 31.]

(2290) Indictment for perjury. § 153. In any indictment for perjury, it shall be sufficient to set forth the substance of the offense charged, and by what court or before whom the oath was taken (averring such court or person to have competent authority to administer the same), together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record, proceeding or process, of any commission or authority of the court or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same. [G. S. 1868, ch. 31, § 153, Oct. 31.]

(2291) Indictment for subornation. § 154. In every indictment for subornation of perjury, or for any corrupt bargain, contract or attempt to procure another to commit perjury, it shall be sufficient to set forth the substance of the offense, without setting forth the record, proceedings or process, or any commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. [G. S. 1868, ch. 31, § 154, Oct. 31.]

(2292.) Bribing witnesses. § 155. Every person who shall, by bribery, menace or other means, directly or indirectly, induce or attempt to induce any witness to absent himself, or avoid a subpoena or other process, or to withhold his evidence, or shall deter or attempt to deter him from appearing or giving evidence in any cause, matter or proceeding, civil or criminal, shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, and by fine not exceeding three hundred dollars. [G. S. 1868, ch. 31, § 155, Oct. 31.]

(2293) Jurors, arbitrators, etc., taking bribes. § 156. If any person summoned as a juror, or if any person chosen as an arbitrator, or appointed a referee, shall take any thing to give his verdict, award or report, or shall receive any gratuity or gift

from any party to a suit, proceeding or prosecution, for the trial of which such person shall have been summoned or sworn as a juror, or for the hearing of which he shall have been chosen an arbitrator or appointed a referee, he shall on conviction be punished by confinement and hard labor not exceeding five years. [G. S. 1868, ch. 31, § 156, Oct. 31.]

(2294) Bribing jurors, arbitrators, etc. § 157. Every person who shall corrupt or attempt to corrupt any other person, summoned or sworn as juror, appointed a referee or chosen an arbitrator, by giving or offering to give any gift or gratuity whatsoever, with intent to bias the mind of such juror, referee or arbitrator, or incline him to be more favorable to one side than the other, in relation to any cause, matter or proceeding which may be pending in the court to which such juror shall have been summoned, or in which such referee or arbitrator shall have been chosen or appointed, shall on conviction be punished as in the next preceding section is prescribed. [G. S. 1868, ch. 31, § 157, Oct. 31.]

(2295) Jurors promising verdict, or receiving papers, etc. § 158. If any person summoned or sworn as a juror in any case shall promise or agree to give any verdict for or against any party, in any cause or proceeding, civil or criminal, or shall receive any paper, evidence or information from anyone, in relation to any matter or cause, for the trial of which he shall be sworn, without the authority of the court or officer before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer, he shall on conviction be adjudged guilty of a misdemeanor, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 158, Oct. 31.]

(2296) Attempting to influence jurors, etc. § 159. Every person who shall attempt improperly to influence any juror in any civil or criminal case, or anyone summoned as a juror, or anyone chosen as arbitrator, or appointed a referee in

relation to any matter pending in the court or before the officer before whom such juror has been summoned or sworn, or pending before such arbitrator or referee, shall upon conviction be adjudged guilty of a misdemeanor, and punished as in the last preceding section is prescribed. [G. S. 1868, ch. 31, § 159, Oct. 31.]

(2297) Officer guilty of improper conduct. § 160. If any person whose duty it shall be to select or summon any jurors in any court or before any court, or before any officer, shall be guilty of any unfair, partial or improper conduct in selecting or summoning any juror, he shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 160, Oct. 31.]

(2298) Compounding felony. § 161. Every person having a knowledge of the actual commission of any offense punishable by death, or by confinement and hard labor, who shall take any money or property of another, or any gratuity or reward, or any promise, undertaking or engagement therefor, upon agreement or understanding, express or implied, to compound or conceal such crime, or to abstain from any prosecution thereof, or withhold any evidence thereof, shall upon conviction be punished by confinement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 161, Oct. 31.]

(Hoover v. Wood, McC. 79.)

(2299) Compounding or concealing misdemeanor. § 162. Every person having a knowledge of the actual commission of any offense punishable only by imprisonment in the county jail, or by fine, or by such imprisonment and fine, or of any misdemeanor or violation of any statute for which any pecuniary or other penalty or forfeiture is or shall be prescribed, who shall take any money, property, gratuity or reward, or any promise, engagement or undertaking thereof, upon any agreement or understanding, express or implied, to compound or conceal any such offense or misdemeanor, or to abstain from

any prosecution thereof, or to withhold any evidence thereof, shall upon conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 162, Oct. 31.]

(2300) Conviction of Principal not necessary. § 163. Upon the trial of any indictment for any offenses specified in the last two sections, it shall not be necessary to prove the conviction of any offender for the offense in relation to which any agreement or understanding therein prohibited shall have been made. [G. S. 1868, ch. 31, § 163, Oct. 31.]

(2301) Obstructing process in cases of felony. § 164. If any person or persons shall knowingly and willfully obstruct, resist or oppose any sheriff or other ministerial officer, in the service or execution, or in the attempt to serve or execute any writ, warrant or process, or in the discharge of any official duty in any case of felony, every person so offending shall upon conviction be punished by confinement and hard labor for a term not exceeding five years, or by imprisonment in the county jail for a term not less than six months, or a fine not less than five hundred dollars. [G. S. 1868, ch. 31, § 164, Oct. 31.]

(2302) Obstructing process. § 165. If any person or persons shall knowingly and willfully obstruct, resist or oppose any sheriff, or any other ministerial officer, in the service or execution, or in the attempt to serve or execute any writ, warrant or process, or in the discharge of any other duty, in any case, civil or criminal, other than a felony, or in the service or attempt to serve any order or rule of court, in any case, every person so offending shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 165, Oct. 31.]

(2303) Assaulting officers. § 166. Every person who shall knowingly and willfully assault, beat or wound any such

officer, while engaged in the service or execution, or attempt to serve or execute any writ, warrant or process, original or judicial, or any order or rule of court, or while in the discharge of any other official duty, shall on conviction be adjudged guilty of a misdemeanor, and punished as in the last preceding section is declared. [G. S. 1868, ch. 31, § 166, Oct. 31.]

(2304) Rescuing prisoner. § 167. If any person or persons shall, by force, set at liberty or rescue from custody or prison any person convicted of a capital offense, or shall set at liberty or rescue any person convicted of such crime, while going to execution, or during execution, every person so offending shall be punished by confinement and hard labor for a term not less than ten years nor more than twenty-one years. [G. S. 1868, ch. 31, § 167, Oct. 31.]

(State v. Chapman, 33 K. 134.)

(2305) The same. § 168. If any person or persons shall, by force, set at liberty or rescue any prisoner while in custody or confinement for a capital offense, before conviction, every person so offending shall on conviction be punished by confinement and hard labor not exceeding ten years. [G. S. 1868, ch. 31, § 168, Oct. 31.]

(2306) The same. § 169. If any person or persons shall, by force, set at liberty or rescue any prisoner in custody or confinement for felony not capital, whether before or after conviction, every person so offending shall be punished by confinement and hard labor for a term not exceeding ten years. [G. S. 1868, ch. 31, § 169, Oct. 31.]

(2307) The same. § 170. If any person or persons shall, by force, set at liberty or rescue any person held in custody or prison for any offense other than felony, whether before or after conviction, or upon any writ or process, in any civil case, every person so offending shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, and by fine not exceeding five hundred dollars. [G. S. 1868, ch. 31, § 170, Oct. 31.]

(2308) Attempt to rescue. § 171. Every person who shall attempt, by force, to set at liberty or rescue any prisoner in custody or confinement for a felony, whether before or after conviction, shall be punished by confinement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 171, Oct. 31.]

(2309) The same. § 172. Every person who shall attempt, by force, to set at liberty or rescue any prisoner in custody for an offense other than felony, before or after conviction, or upon any writ, warrant or process, original or judicial, in a civil case, or any other lawful authority, shall on conviction be adjudged guilty of a misdemeanor, and punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months. [G. S. 1868, ch. 31, § 172, Oct. 31.]

(2310) Aiding escape of felons. § 173. Every person who shall convey into the penitentiary, or any jail or other place of imprisonment, any disguised instrument, arms or other thing proper or useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner, lawfully committed to or detained in any such place of confinement and hard labor, for any felony whatever, whether such escape be effected or attempted or not, shall upon conviction be punished by imprisonment in the penitentiary for a term not exceeding ten years. [G. S. 1868, ch. 31, § 173, Oct. 31.]

(2311) Aiding escape of prisoners. § 174. Every person who shall convey into any jail or place of confinement any disguised instrument, or anything proper or useful to facilitate the escape of any prisoner lawfully committed to or detained in such jail or place of confinement, for any criminal offense other than a felony, or lawfully imprisoned or detained therein for any violation of any penal statute, or in any civil action, whether such escape be effected or attempted or not, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both such fine and imprisonment. [G. S. 1868, ch. 31, § 174, Oct. 31.]

(2312). Aiding felon to escape, etc. § 175. Every person who shall, by any means whatever, aid or assist any prisoner, lawfully detained in jail or place of confinement, for any felony, to escape therefrom, whether such escape be effected or not, shall upon conviction be punished by confinement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 175, Oct. 31.]

(2313) Aiding prisoner to escape, etc. § 176. Every person who shall, by any means whatever, aid or assist any prisoner lawfully committed to any jail or place of confinement, in any case, civil, or criminal, other than a felony, to escape therefrom, whether such escape be effected or not, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 176, Oct. 31.]

(State v. Fry, 40 K. 306.)

(2314) Aiding escape from custody of officer. § 177. Every person who shall aid or assist any prisoner in escaping or attempting to escape from the custody of any sheriff, coroner, constable or other ministerial officer or other person who shall have the lawful charge of such prisoner, shall upon conviction be punished in the same manner as if such prisoner were confined in any jail or other place of confinement. [G. S. 1868, ch. 31, § 177, Oct. 31.]

(2315) Prisoner aiding or assisting. § 178. But if any aid or assistance prohibited by the last three sections be rendered by any prisoner detained for any crime, in the same jail, place of confinement or custody, with the intent of facilitating his own escape, the punishment of such prisoner shall not exceed that prescribed by law upon conviction for his own escape. [G. S. 1868, ch. 31, § 178, Oct. 31.]

(2316) Person breaking prison. § 179. If any person, confined in a place of confinement for any term less than for life, or in lawful custody, going to the place of confinement,

shall break such prison or custody, and escape therefrom, he shall upon conviction be punished by confinement and hard labor for a term not exceeding five years, to commence at the expiration of the original term of imprisonment. [G. S. 1868, ch. 31, § 179, Oct. 31.]

(2317) Escaping from penitentiary. § 180. If any person, confined in the penitentiary for any term less than life, shall escape from such prison or from the custody of the officers, he shall be liable to the punishment imposed for breaking the prison. [G. S. 1868, ch. 31, § 180, Oct. 31.]

(2318) Escaping from penitentiary, etc. § 181. If any person confined at hard labor for any term less than life shall escape therefrom without being guilty of breaking such prison, within the meaning of the preceding section, he shall upon conviction be punished by confinement and hard labor for a term not exceeding three years, to commence at the expiration of the original term of imprisonment. [G. S. 1868, ch. 31, § 181, Oct. 31.]

(2319) Breaking county jail. § 182. If any person confined in any county jail upon conviction for any criminal offense, or held in custody, going to such jail, shall break such prison or custody and escape therefrom, he shall upon conviction be punished by confinement and hard labor not exceeding three years, or in a county jail not less than six months, to commence at the expiration of the original term of imprisonment. [G. S. 1868, ch. 31, § 182, Oct. 31.]

(Wheeler v. State, 39 K. 163.)

(2320) Escaping before conviction. § 183. If any person lawfully imprisoned or detained in any county jail or other place of imprisonment, or in the custody of any officer, upon any criminal charge, before conviction for the violation of any penal statute, shall break such prison or custody and escape therefrom, he shall upon conviction be punished by confinement and hard labor for a term not exceeding two years, or in a county jail not less than six months. [G. S. 1868, ch. 31, § 183, Oct. 31.]

(State v. Lewis, 19 K. 260.)

(2321) Attempting to escape from penitentiary, etc.

§ 184. Every person lawfully confined at hard labor, or held in custody going to such place of confinement, under a sentence of imprisonment therein for a term less than life, who shall attempt, by force or violence to any person, to effect his escape from such confinement or custody, whether such escape be effected or not, shall upon conviction be punished by confinement and hard labor not exceeding five years, to commence at the expiration of the original term of imprisonment. [G. S. 1868, ch. 31, § 184, Oct. 31.]

(2322) From county jail.

§ 185. Every person lawfully imprisoned in a county jail or other place of confinement, or held in custody of any officer for any cause whatever, who shall attempt by force or violence to any person to effect his escape from such imprisonment or custody, although no escape be effected, shall upon conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or fined not exceeding one hundred dollars, or both. [G. S. 1868, ch. 31, § 185, Oct. 31.]

(Stone v. Dysert, 20 K. 123.)

(2323) Officer, liability of.

§ 186. If any officer or other person, having by law the custody or charge of any place of confinement and hard labor or any county jail or other place of confinement, or the under-officer or deputy of such officer or person, shall knowingly suffer or permit any disguised instrument, arms or other thing proper or useful to aid any prisoner in his escape, to be conveyed into or remain in such jail or place, he shall upon conviction suffer the like punishment as the person conveying such disguised instrument, arms or other thing into such jail or place, would be liable to, according to the provisions of this act. [G. S. 1868, ch. 31, § 186, Oct. 31.]

(2324) Permitting or conniving at escape.

§ 187. If any officer, or his under-officer or deputy, or any lessee, keeper, agent or guard, of any place of confinement, having the lawful custody of any prisoner, for any cause whatever, shall volun-

tarily suffer, or permit, or connive at, the escape of such prisoner from his custody, or permit him to go at large, he shall on conviction be punished in the same manner as if he were convicted of aiding or assisting such prisoner to escape. [G. S. 1868, ch. 31, § 187, Oct. 31.]

(State v. Chapman, 33 K. 134.)

(2325) Refusal to execute process. § 188. If any sheriff or other officer shall willfully or corruptly fail or refuse to execute any lawful process, which by law it is his duty to execute, requiring the apprehension or confinement of any person charged with a criminal offense, whereby such person shall escape, the officer so offending shall be punished in the same manner as persons convicted of aiding or assisting in such escape. [G. S. 1868, ch. 31, § 188, Oct. 31.]

(2326) Refusing to receive prisoner. § 189. If any jailer, or keeper of a county jail, shall refuse to receive in the jail under his charge any person lawfully committed to such jail on any criminal charge or conviction, or on any lawful process whatever, he shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, and by fine not exceeding five hundred dollars. [G. S. 1868, ch. 31, § 189, Oct. 31.]

(2327) Forfeiture of office. § 190. Every officer who shall be convicted of any of the offenses specified in the last four preceding sections shall forfeit his office. [G. S. 1868, ch. 31, § 190, Oct. 31.]

(2328) Prisoner escaping may be retaken. § 191. If any person sentenced to imprisonment in a county jail, or other place of confinement, on a conviction for a criminal offense, shall escape, he may be pursued, retaken, and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is retaken, and remain so imprisoned until tried for such escape, or until he be discharged by a failure to prosecute therefor. [G. S. 1868, ch. 31, § 191, Oct. 31.]

(Hollon v. Hopkins, 21 K. 638.)

(2329) Common barratry. § 192. Every person who shall be convicted of being a common barrator shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 192, Oct. 31.]

ARTICLE 6.—OF CRIMES AFFECTING PUBLIC TRUSTS.

(2330) Bribery of officer. § 193. Every person who shall, directly or indirectly, give any money, goods, rights in action, or other valuable consideration, gratuity or reward, or any promise, undertaking or security therefor, to any officer of this state, or of any county—*First*, with intent to influence his vote, opinion, judgment or decision on any question, matter, cause or proceeding which may be then pending, or may by law be brought before him in his official capacity, or to induce him to neglect or omit the performance of any official duty, or to perform such duty with partiality or favor, otherwise than is required by law; or, *second*, in consideration that such officer hath given any vote, opinion, judgment, or decision, in any particular manner, upon any particular side, or more favorable to one side than the other, in any matter, question, cause or proceeding, or hath omitted to perform any official act or duty, or hath performed such act or duty with partiality or favor, or otherwise, contrary to law, shall on conviction be adjudged guilty of bribery, and be punished by confinement and hard labor for a term not exceeding seven years. [G. S. 1868, ch. 31, § 193, Oct. 31.]

(K. P. Rly. Co. v. McCoy, 8 K. 538, 544.)

(2331) Repeal. § 194. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2332) Bribery, to obtain appointment. § 195. Every person who shall, directly or indirectly, give or engage to give any sum of money, or other valuable consideration, gratuity, or reward to any officer—*First*, with intent to influence or induce such officer to give or procure for him, or any other, by his act, interest, influence, or other means whatever, any appointment, office, or place of trust, or any preferment or emolument, or as

sist by any means whatever to procure the same; or, *second*, in consideration of any office or appointment, preferment, or emolument, act, interest, or influence, or any aid or assistance in procuring or attempting to procure such appointment, office, or place of trust, or any emoluments, shall on conviction be adjudged guilty of bribery, and shall be punished by confinement and hard labor for a term not exceeding seven years. [G. S. 1868, ch. 31, § 195, Oct. 31.]

(2333) Repeal. § 196. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2334) Repeal. § 197. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2335) Offering or attempting to bribe. § 198. If any person shall, by any of the means mentioned in the preceding sections of this act, or otherwise, offer or attempt to bribe any officer or other person in any of the cases hereinbefore mentioned, he shall upon conviction be punished by confinement and hard labor for a period not exceeding five years, or by imprisonment in the county jail for a term not exceeding one year, and a fine not less than one thousand dollars. [G. S. 1868, ch. 31, § 198, Oct. 31.]

(2336) Bribery, for election to office. § 199. If any person shall, directly or indirectly, give or procure to be given, or engage to give, any money, gift, or reward, or any office, place, or employment, upon any engagement, contract or agreement that the person to whom, or to whose use, or on whose behalf such gift or promise shall be made, shall, by himself or any other, procure or endeavor to procure the election of any person to any office, at any election by the electors, or any public body, under the constitution or laws of this state, the person so offending shall on conviction be adjudged guilty of bribery, and punished by imprisonment and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 199, Oct. 31.]

(Moonlight v. Bond, 17 K. 351.)

(2337) Repeal. § 200. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2338) Repeal. § 201. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2339) Bribery of voters. § 202. If any person, by himself or any person employed by him, shall, by gift or reward, office or employment, or by any promise, agreement or security therefor, corrupt or procure, or attempt to corrupt or procure, any person, who shall have or claim to have a right to vote at any election, to give or forbear to give his vote at such election, the person so offending shall on conviction be adjudged guilty of bribery, and punished as in the next preceding section is prescribed. [G. S. 1868, ch. 31, § 202, Oct. 31.]

(2340) Repeal. § 203. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2341) Repeal. § 204. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2342) Repeal. § 205. [Repealed by Laws 1869, ch. 43, § 1, March 11.]

(2343) Grant or deputation of office. § 206. Every grant or deputation of office made contrary to the foregoing provisions shall be void; but all official acts done before conviction, under this act, by any deputy of an officer authorized to make such appointment, shall be valid. [G. S. 1868, ch. 31, § 206, Oct. 31.]

(2344) Oppression, partiality, etc. § 207. Every person exercising or holding any office of public trust who shall be guilty of willful and malicious oppression, partiality, misconduct, or abuse of authority, in his official capacity, or under color of his office, shall on conviction be punished by imprisonment in a county jail for a term not exceeding one year, and fined not exceeding one thousand dollars. [G. S. 1868, ch. 31, § 207, Oct. 31.]

(*State ex rel. v. Foster*, 32 K. 14; *State v. Wilson*, 30 K. 673; *State v. Reeves*, 15 K. 396; *Clark v. Spicer*, 6 K. 440.)

(2345) Fraud committed by public officer. § 208. Every officer or public agent of this state, or of any county, who shall commit any fraud in his official capacity, or under color of his office, shall be adjudged guilty of a misdemeanor, and pun-

ished by imprisonment in the county jail for a term not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. [G. S. 1868, ch. 31, § 208, Oct. 31.]

(State v. Wilson, 30 K. 673.)

(2346) Persons convicted of offenses, disqualified.

§ 209. Every person who shall be duly convicted of any of the offenses mentioned in the preceding sections of this act shall be forever disqualified from holding any office of honor, trust or profit under the laws of this state, and from voting at any election. [G. S. 1868, ch. 31, § 209, Oct. 31.]

(State v. Foster, 32 K. 39; State *ex rel.* v. Wilson, 30 K. 661.)

(2347) Officer exacting illegal fees. § 210. Every officer who shall, by color of his office, unlawfully and willfully exact or demand and receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor, punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 210, Oct. 31.]

(*In re* Donnelly, 30 K. 191; State v. Brooks, 33 K. 708; State v. Forbriger, 34 K. 1.)

(2348) Unlawfully collecting taxes. § 211. Every collector of taxes who shall unlawfully collect taxes when none are due, or shall willfully and unlawfully exact or demand more than is due, shall upon conviction be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 211, Oct. 31.]

(2349) Willful misconduct or neglect. § 212. Every officer or person holding any trust or appointment who shall be convicted of any willful misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the punishment of such misde-

meanor, misconduct, or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 212, Oct. 31.]

(*State v. Foster*, 32 K. 36; *Clark v. Spicer*, 6 K. 440.)

(2350) Forfeiture of office. § 213. Every officer who shall be convicted of any official misdemeanor or misconduct in office, or who shall be convicted of any offense which by this or any other statute is punishable by disqualification to hold office, shall, in addition to the other punishments prescribed for such offenses, forfeit his office. [G. S. 1868, ch. 31, § 213, Oct. 31.]

(*State ex rel. v. Foster*, 32 K. 14; *State v. Wilson*, 30 K. 668.)

(2351) Usurpation of office. § 214. If any person shall take upon himself any office or public trust in this state, and exercise any power to do any act appertaining to such office or trust, without a lawful appointment or deputation, he shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. [G. S. 1868, ch. 31, § 214, Oct. 31.]

(2352) Attempting unlawfully to influence votes. § 215. If any person, by menaces, threats or force, or by any other unlawful means, either directly or indirectly, attempts to influence any qualified voter in giving his vote, or to deter him from giving the same, or disturbs or hinders him in the free exercise of his right of suffrage, at any election held under the laws of this state, the person so offending shall on conviction thereof be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. [G. S. 1868, ch. 31, § 215, Oct. 31.]

(2353) Voting more than once. § 216. Every person who shall, at the same election, vote more than once, either at the same or different place, shall on conviction be adjudged guilty of a misdemeanor, and be punished by fine not exceed-

ing three hundred dollars, or by imprisonment in the county jail not exceeding one year. [G. S. 1868, ch. 31, § 216, Oct. 31.]

(2354) Voting without being qualified. § 217. Every person not being a qualified voter according to the constitution and the laws of this state, who shall vote at any election within this state, knowing that he is not entitled to vote, shall be adjudged guilty of a misdemeanor, and punished by fine not exceeding three hundred dollars, and imprisonment in the county jail not exceeding one year. [G. S. 1868, ch. 31, § 217, Oct. 31.]

(2355) Fraudulently giving voter tickets. § 218. Any person who designedly gives a printed or written ticket to any qualified voter of this state, containing the written or printed names of persons for whom said voter does not design to vote, for the purpose of causing such voter to poll his vote contrary to his own wishes, shall on conviction be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 218, Oct. 31.]

(2356) Receiving illegal votes, etc. § 219. Any person or persons whomsoever, who may be charged with holding any election in this state, authorized by law, who shall willfully and knowingly receive any vote offered by any person who is not a resident in good faith of this state at the time of offering to vote, or who shall have voted previously at the same election, or any person who shall knowingly and willfully commit any irregularity or fraud whatever with the intent to hinder, prevent or defeat a fair expression of the popular will, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than one year nor more than three years. [G. S. 1868, ch. 31, § 219, Oct. 31.]

(Gilleland v. Schuyler, 9 K. 569, 570.)

(2357) Counterfeit poll books. § 220. Any person who shall have in his possession any falsely made, altered, forged or

counterfeit poll books, tally list or election returns of any election in this state, authorized by law or held under any semblance or pretense of law, knowing the same to be falsely made, altered, forged, or counterfeited, with intent to hinder, prevent or defeat a fair expression of the popular will, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than one year nor more than three years. [G. S. 1868, ch. 31, § 220, Oct. 31.]

(2358) Fraudulently canvassing election. § 221. Any person or persons whomsoever, who may be authorized by law or any semblance or pretense of law, to receive, canvass or count the poll books or tally lists or election returns of any election held under law or any semblance or pretense of law, who shall willfully and knowingly receive, canvass and count any poll books, tally lists or election returns, which are fraudulent, forged, or counterfeited, or shall falsely and fraudulently count and cast up any poll books, tally lists, election returns, or votes, with intent to hinder, prevent or defeat a fair expression of the popular will, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than two years nor more than five years. [G. S. 1868, ch. 31, § 221, Oct. 31.]

(2359) Granting certificates; fraudulent elections. § 222. Any person or persons authorized by law, or by any semblance or pretense of law, to grant certificates of election, or to declare, by proclamation or otherwise, the result of any election held under law or any semblance or pretense of law, who shall grant such certificates or declare the result of such election, based upon fraudulent, fictitious or illegal votes, with intent to hinder, prevent or defeat a fair expression of the popular will, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than two years nor more than five years. [G. S. 1868, ch. 31, § 222, Oct. 31.]

(2360) Inscribing name of person not voting. § 223. Any person or persons who shall knowingly and willfully in-

scribe or cause to be inscribed upon any poll book, tally list or election returns of any election held under law or any semblance or pretense of law, the name of any person not entitled to vote or not voting, with intent to hinder, prevent, or defeat a fair expression of the popular will, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than one year nor more than two years. [G. S. 1868, ch. 31, § 223, Oct. 31.]

(2361) Subscribing counterfeit election returns. § 224. Any person who shall subscribe or cause to be subscribed his own name or any other name, as judge or clerk of any election, to any falsely made, altered, fraudulent or counterfeited poll book, tally list or election returns, knowing the same to be falsely made, altered, fraudulent, or counterfeited, with intent to hinder, prevent or defeat a fair expression of the popular will, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment and hard labor for a term not less than one year nor more than two years. [G. S. 1868, ch. 31, § 224, Oct. 31.]

ARTICLE 7.—CRIMES AGAINST PUBLIC MORALS AND DECENCY.

(2362) Bigamy. § 225. Every person having a husband or wife living, who shall marry any other person, whether married or single (except in the cases specified in the next section), shall on conviction be adjudged guilty of bigamy, and punished by confinement and hard labor not exceeding five years, or in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months. [G. S. 1868, ch. 31, § 225, Oct. 31.]

(*State v. Walker*, 36 K. 297.)

(2363) Cases excepted. § 226. The last section shall not, by reason of any former marriage, extend to any person again marrying, in either of the following cases:

First, Where the husband and wife by such former marriage

shall have been absent for five successive years, without being known to such person to be living.

Second, Where the husband or wife by such former marriage shall have been absent and continually remaining without the United States and their territories for five successive years.

Third, Where such former marriage shall have been dissolved by legislative enactment or other competent authority, and such person is not by law prohibited from again marrying, or the time of such disability has expired.

Fourth, Where such former marriage shall have been declared void by competent authority.

Fifth, Where such former marriage was contracted by such persons while under the age of legal consent. The age of legal consent, as intended by this act, shall be of males, fifteen, and of females, twelve years.

Sixth, Where the husband or wife by such former marriage shall have been sentenced to confinement and hard labor for life. [G. S. 1868, ch. 31, § 226, Oct. 31.]

(2364) Marrying without this state. § 227. Every person having a husband or wife living, who shall marry another person without this state, in any case where such marriage would be punishable if contracted or solemnized within this state, and shall afterward cohabit with such other person within this state, shall be adjudged guilty of bigamy, and punished in the same manner as if such second or subsequent marriage had taken place within this state. [G. S. 1868, ch. 31, § 227, Oct. 31.]

(State v. Hughes, 35 K. 626.)

(2365) Where indictment found. § 228. An indictment for bigamy, as defined in the preceding sections, may be found, and proceedings, trial, conviction, judgment and execution thereon had, in the county in which such second or subsequent marriage or the cohabitation shall have taken place, or in the county in which the offender may be apprehended. [G. S. 1868, ch. 31, § 228, Oct. 31.]

(State v. Hughes, 35 K. 626.)

(2366) Unmarried person marrying the husband or wife of another. § 229. If any unmarried person shall knowingly marry the husband or wife of another, in any case where such husband or wife should be punished according to the foregoing provisions, such person shall upon conviction be punished by confinement and hard labor not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 229, Oct. 31.]

(2367) Incest. § 230. Persons within the degrees of consanguinity within which marriages are by law declared to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall upon conviction be punished by confinement and hard labor not exceeding seven years. [G. S. 1868, ch. 31, § 230, Oct. 31.]

(2368) Crime against nature. § 231. Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind or with beast, shall be punished by confinement and hard labor not exceeding ten years. [G. S. 1868, ch. 31, § 231, Oct. 31.]

(2369) Adultery, public indecency, etc. § 232. Every person who shall be guilty of adultery, and every man and woman (one or both of whom are married, and not to each other) who shall lewdly and lasciviously abide and cohabit with each other, and every person married or unmarried, who shall be guilty of open, gross lewdness, or lascivious behavior, (or of any open and notorious act of public indecency, grossly scandalous,) shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 232, as amended by Laws 1869, ch. 42, § 1, Feb. 27.]

(Henicke v. Griffith, 29 K. 516; State v. Buffington, 20 K. 599.)

(2370) Guardian carnally knowing ward. § 233. If any guardian of any female under the age of eighteen years, or

any other person to whose care or protection any such female shall have been confided, shall defile her by carnally knowing her, he shall, in cases not in this act otherwise provided for, be punished by confinement and hard labor not less than two years nor more than twenty-one years, or by imprisonment in a county jail not less than six months, and a fine not exceeding one thousand dollars. [G. S. 1868, ch. 31, § 233, Oct. 31.]

(State v. Stipe, 38 K. 201; State v. Jones, 16 K. 608.)

(2371) Solemnizing illegal marriage. § 234. Every person who shall solemnize any marriage, having knowledge of any fact which renders such marriage criminal in either of the parties, under the preceding provisions of this act, or where either of the parties shall be under the age of legal consent, or where to his knowledge any other legal impediment exists to such marriage, shall on conviction be adjudged guilty of a misdemeanor, and be punished by imprisonment in a county jail not exceeding one year, or by fine not less than five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 234, Oct. 31.]

(2372) Removing dead body. § 235. Every person who shall remove the dead body or remains of any human being from the grave or other place of interment or sepulcher, for the purpose of selling the same, or for the purpose of dissection, or any surgical or anatomical experiment or preparation, or from mere wantonness or mischief, shall upon conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 235, Oct. 31.]

(2373) Receiving body. § 236. Every person who shall receive the dead body or remains of any human being, knowing the same to have been disinterred contrary to the provisions of the preceding section, shall on conviction be adjudged guilty of a misdemeanor, and punished as in that section specified. [G. S. 1868, ch. 31, § 236, Oct. 31.]

(2374) Opening grave with intent to remove. § 237.

Every person who shall open the grave, or other place of interment or sepulcher, with the intent to remove the dead body or remains of any human being for any of the purposes aforesaid, or to steal the coffin, or any vestment or other article, or any part thereof, interred with such body, shall on conviction be adjudged guilty of a misdemeanor, and punished as in the second preceding section is specified. [G. S. 1868, ch. 31, § 237, Oct. 31.]

(2375) Exception to three preceding sections. § 238.

The provisions of the last three sections shall not extend to any person who shall open a grave or other place of sepulcher or interment, or remove, sell or receive the body of any deceased person, for the purpose of dissection or some surgical or anatomical experiment, examination, or preparation, with the knowledge and consent of the near relations of such deceased person, nor to the disinterment or removal for such purpose, of the body of any criminal executed for crime. [G. S. 1868, ch. 31, § 238, Oct. 31.]

(2376) Gaming and gambling devices. § 239. Every person who shall set up and keep any table or gambling device commonly called A B C, faro bank, E O, roulette, equality, or any kind of gambling table or gambling device, adapted, devised and designed for the purpose of playing any game of chance for money or property, or shall induce, entice or permit any person to bet or play at or upon any such gaming table or gambling device, or at or upon any game played at or by means of such table or gambling device, either on the side of or against the keeper thereof, or shall keep a place or room for the purpose of playing any game of cards for money or property, or shall allow any person or persons to play any game of chance by means of cards, or to play any game of cards on which property or money is bet in any room under his charge or control, shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not less than twenty-

four hours and not exceeding one year, and by fine not exceeding one thousand dollars. [G. S. 1868, ch. 31, § 239, as amended by Laws 1887, ch. 149, § 1, March 16.]

(*Rice v. State*, 3 K. 141; *State v. Hardin*, 1 K. 474.)

(2377) Confidence game, etc. § 239a. Whoever shall in this state deal, play or practice, or be in any manner accessory to the dealing, playing or practicing of the confidence game or swindle known as three-card monte, or of any such game, play, or practice, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not to exceed five thousand dollars, and by confinement in the penitentiary not less than two nor more than five years. [Laws 1876, ch. 81, § 1, March 9.]

(2378) On railway car. § 239b. Whoever shall in this state, on any railroad car, coach, or train, practice any confidence game not mentioned in the preceding section, or shall sell any prize packages or other prize, shall be deemed guilty of a misdemeanor. [Laws 1876, ch. 81, § 2, March 9.]

(2379) Duty of railroad employes; venue. § 239c. It is hereby made the duty of railroad conductors, brakemen on railroad trains, to immediately arrest the person so offending, without warrant or other process, and to call upon all bystanders or others for assistance, when the same may be necessary to enable them to make such arrest. And when such offense is committed on any railroad car, coach, or train, the venue shall lie and the person be tried in any county through which such railroad may run, not outside of the judicial district in which the offense was committed, any law to the contrary notwithstanding. [Laws 1876, ch. 81, § 3, March 9.]

(2380) Betting money; gambling table, etc. § 240. Every person who shall bet any money or property upon any gaming table, bank or device, prohibited by the preceding section, or at or upon any other gambling device, or who shall bet upon any game played at or by means of any such gaming table or other gambling device, shall on conviction be adjudged

guilty of a misdemeanor, and punished by fine not exceeding one hundred dollars nor less than ten dollars. [G. S. 1868, ch. 31, § 240, Oct. 31.]

(Washer v. Bond, 40 K. 84; State v. Stillwell, 16 K. 24; State v. Shewalter, 16 K. 26.)

(2381) Suffering gambling table, etc., to be set up, etc. § 241. Every person who shall permit any gaming table, bank or device prohibited by the two hundred and thirty-ninth section to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot, or other premises to him belonging, or by him occupied, or of which he hath, at the time, possession or control, shall on conviction be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars nor less than fifty dollars, or imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment; and no person, otherwise competent as a witness, shall be disqualified from testifying as a witness, concerning the offenses mentioned in the three preceding sections, on the ground that his testimony may criminate himself, but such testimony shall be reduced to writing, and no indictment or prosecution shall afterwards be brought against him for said offenses concerning which he testifies as a witness. [G. S. 1868, ch. 31, § 241, Oct. 31.]

(2382) Keeping gambling house. § 242. Every person who shall set up or keep a common gaming house, or a bawdy house or brothel, shall on conviction be adjudged guilty of a misdemeanor, and be punished by fine not exceeding one thousand dollars. [G. S. 1868, ch. 31, § 242, Oct. 31.]

(2383) Leasing house. § 243. Every person who shall knowingly lease or let to another any house or other building, for the purpose of setting up or keeping therein any of the gaming tables, banks or devices prohibited by the preceding provisions, or for the purpose of being used or kept as a gaming house, brothel, or bawdy house, shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding three months, or by fine not ex-

ceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 243, Oct. 31.]

(2384) Keeper of table, brothel, etc. § 244. Every person appearing or acting as master or mistress, or having the care, use or management, for the time, of any prohibited gaming table, bank, or device, shall be deemed the keeper thereof ; and every person who shall appear or act as master or mistress, or having the care or management of any house or building in which any gaming table, bank or device is set up or kept, or of any gaming house, brothel, or bawdy house, shall be deemed the keeper thereof. [G. S. 1868, ch. 31, § 244, Oct. 31.]

(2385) Lease void. § 245. Whenever any lessee of any house or building shall be convicted of suffering any prohibited gaming table, bank, or device, to be set up, or kept, or used therein, for the purpose of gaming, or of keeping in the same a bawdy house, brothel, or common gaming house, the lease or the agreement for letting such house or building shall become void, and the lessor may enter on the premises so let, and shall have the same remedies for the recovery thereof as in case of a tenant holding over his term. [G. S. 1868, ch. 31, § 245, Oct. 31.]

(2386) Participants in games may testify. § 246. No person shall be incapacitated or excused from testifying touching any offense committed by another against any of the foregoing provisions relating to gaming, by reason of his having betted or played at any of the prohibited games or gaming devices ; but the testimony which may be given by such person shall in no case be used against him. [G. S. 1868, ch. 31, § 246, Oct. 31.]

(2387) Duty of judge or justice. § 247. Whenever any judge or justice of the peace shall have knowledge, or shall receive satisfactory information that there is any prohibited gaming table or gambling device kept or used within his county, it shall be his duty forthwith to issue his warrant, directed to the sheriff or any constable, to seize and bring before said judge or

justice such gaming table or other device. [G. S. 1868, ch. 31, § 247, Oct. 31.]

(2388) Warrant to apprehend keeper. § 248. If any judge or justice have knowledge, or shall be satisfactorily informed, of the name or description of the keeper of any such prohibited gaming table or device, he shall also issue his warrant to apprehend such keeper, and bring him before such judge or justice. [G. S. 1868, ch. 31, § 248, Oct. 31.]

(2389) Powers of officer. § 249. The officer who shall be charged with the execution of any warrant specified in either of the last two sections shall have power, if necessary, to break open doors for the purpose of executing the same, and for that purpose may summon to his aid the power of the county. [G. S. 1868, ch. 31, § 249, Oct. 31.]

(2390) Table to be destroyed. § 250. It shall be the duty of every judge or justice of the peace, before whom any such prohibited gaming table or device shall be brought, to cause the same to be publicly destroyed, by burning or otherwise. [G. S. 1868, ch. 31, § 250, Oct. 31.]

(*Rice v. State*, McC. 264.)

(2391) Betting on elections. § 251. Every person who shall bet or wager any money or property, or other valuable thing, on the result of any election authorized by the constitution or laws of the United States or of this state, or on any vote to be given at such election, or who shall knowingly become stakeholder of any such bet or wager, shall be punished by fine not exceeding fifty dollars. [G. S. 1868, ch. 31, § 251, Oct. 31.]

(*Cleveland v. Wolff*, 7 K. 187; *Reynolds v. McKinney*, 4 K. 94; *Jennings v. Reynolds*, 4 K. 110.)

(2392) Disturbance of public worship. § 252. Every person who shall at any time interrupt or molest any religious society or any member thereof, or any persons when meeting or met together for the purpose of worship, or performing any duties enjoined on or appertaining to them as members of such society, or shall disquiet or disturb any congregation or assem-

bly of people met for religious worship, by making a noise, or by rude and indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not to exceed one hundred dollars; and if unable to pay the fine, by confinement in the county jail not exceeding three months: *Provided*, That this section shall not be so construed as to deprive any religious society or assembly of persons met for religious worship of the right of laying hands upon the person or persons who may be disturbing the congregation, and turning him or them out of the church or place of worship. [G. S. 1868, ch. 31, § 252, as amended by Laws 1876, ch. 72, § 1, May 1.]

(2393) **Disturbing peace.** § 253. Every person who shall willfully disturb the peace and quiet of any person, family or neighborhood, shall upon conviction thereof be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months. [G. S. 1868, ch. 31, § 253, Oct. 31.]

(State v. Burns, 35 K. 387.)

(2394) **Trading near camp meeting; liquor.** § 254. Every person who shall sell, or expose for sale, give, barter, or otherwise dispose of, in any way or at any place, any spirituous or other liquors, or any article of traffic whatever, at or within the distance of one mile from the place where any religious society or assembly of people are collected or collecting together for religious worship in any camp or field meeting, shall upon conviction be adjudged guilty of a misdemeanor, and be punished by fine not exceeding one hundred dollars: *Provided*, That nothing in this section shall affect tavern-keepers exercising their calling, nor distillers, manufacturers or others in prosecuting their regular trade at their places of business, or any person disposing of any ordinary article of provision, excepting spirituous liquors, at their residences; nor any person having a

written permit from the trustees or managers of any such religious society or assemblage to sell provisions for the supply of persons attending such religious worship, their horses or cattle, such persons acting in conformity to the regulations of said religious assembly, and to the laws of the state. [G. S. 1868, ch. 31, § 254, as amended by Laws 1876, ch. 72, § 2, May 1.]

(2395) Laboring on Sunday. § 255. Every person who shall either labor himself, or compel his apprentice, servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding twenty-five dollars. [G. S. 1868, ch. 31, § 255, Oct. 31.]

(*Morris v. Shew*, 29 K. 661; *Birks v. French*, 21 K. 238; *Johnson v. Brown*, 13 K. 529.)

(2396) Exceptions. § 256. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week. [G. S. 1868, ch. 31, § 256, Oct. 31.]

(2397) Horse racing, etc., on Sunday. § 257. Every person who shall be convicted of horse racing, cock fighting, or playing at cards or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars. [G. S. 1868, ch. 31, § 267, Oct. 31.]

(2398) Selling, etc., on Sunday. § 258. Every person who shall expose to sale any goods, wares or merchandise, or shall keep open any ale- or porter-house, grocery or tippling shop, or shall sell or retail any fermented or distilled liquor, on the first day of the week, commonly called Sunday, shall on conviction be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars. [G. S. 1868, ch. 31, § 258, Oct. 31.]

(2399) Exceptions. § 259. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity. [G. S. 1868, ch. 31, § 259, Oct. 31.]

(2400) Selling poisons without labels, or to minors. § 260. Every person who shall sell or deliver to any other, any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid usually denominated poisonous, without having the word "Poison" plainly written or printed on a label attached to the vial, box, vessel or package containing the same; or who shall sell or deliver any tartar emetic, without having the true name written or printed on a label and attached to the vial, box, vessel or package containing the same; or who shall sell or deliver any such substance or liquid to any minor, without a written permission from the guardian of such minor, specifying the kind of drug that such minor is authorized to purchase, shall on conviction be adjudged guilty of a misdemeanor, and punished by a fine not exceeding fifty dollars. [G. S. 1868, ch. 31, § 260, Oct. 31.]

(2401) Physicians not required to label. § 261. So much of the preceding section as requires the word "Poison," or the name of the drug sold or delivered, to be labeled on the box, vial, or other package containing the same, shall not extend to any practicing physician who shall deliver any of the articles therein mentioned, with a prescription for the use of the article. [G. S. 1868, ch. 31, § 261, Oct. 31.]

(2402) Cruelty to animals. § 262. Every person who shall maliciously and cruelly maim, beat or torture any horse, ox, or other cattle, whether belonging to himself or another, shall on conviction be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars. [G. S. 1868, ch. 31, § 262, Oct. 31.]

(2403) Opening or reading sealed letter. § 263. If any person shall willfully open, or read, or cause to be read, any sealed letter not addressed to himself, without authority to do

so from the writer thereof, or from the person to whom it is addressed, he shall on conviction be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding two hundred and fifty dollars, or by imprisonment in a county jail not exceeding three months. [G. S. 1868, ch. 31, § 263, Oct. 31.]

(2404) Publishing contents of letter. § 264. Every person who shall publish the whole or any part of the contents of such letter, without the authority of the writer thereof, or of the person to whom it is addressed, knowing the same to have been unlawfully opened, shall on conviction be adjudged guilty of a misdemeanor, and punished as in the preceding section specified. [G. S. 1868, ch. 31, § 264, Oct. 31.]

(2405) Exception. § 265. The last two sections shall not extend to the breaking open of letters which shall be punishable by the laws of the United States. [G. S. 1868, ch. 31, § 265, Oct. 31.]

(2406) Running horse on public road. § 266. If any person shall run, or cause to be run, upon any public road or highway in common use in this state, any horse or horses so as to interrupt travelers thereon, or put to fright the horses or other animals by them rode or driven, he shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars. [G. S. 1868, ch. 31, § 266, Oct. 31.]

(2407) Horse race on public road. § 267. If more than two persons shall run, or cause to be run, a match horse race, in any public road in common use, for the purpose of trying the speed of their horses, every person so offending shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars. [G. S. 1868, ch. 31, § 267, Oct. 31.]

ARTICLE 8.—OFFENSES AGAINST THE PUBLIC PEACE.

(2408) Unlawful assemblies. § 268. If three or more persons shall assemble together with intent to do any unlawful act, with force and violence, against the person or property of

another, or to do any unlawful act against the peace, or, being lawfully assembled, shall agree with each other to do any unlawful act aforesaid, shall make any movement or preparation therefor, the person so offending on conviction thereof shall be fined in the sum not exceeding two hundred dollars. [G. S. 1868, ch. 31 § 268, Oct. 31.]

(2409) The same; duty of judge, justice, etc. § 269. When three or more persons shall be assembled as aforesaid and proceed to commit any of the offenses in the preceding section mentioned, it shall be the duty of any judge, justice of the peace, sheriff, constable, marshal, or other peace officer, immediately, upon actual view, or as soon as may be, on information, to make proclamation, in the hearing of such offenders, commanding them in the name of the state of Kansas to disperse and to depart to their several homes or lawful employments; and if, upon such proclamation, such persons shall not disperse and depart as aforesaid, it shall be the duty of such judge, justice of the peace, sheriff, constable, marshal, or other peace officer, to call upon persons near, and if necessary, throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and all persons called on as aforesaid, and refusing to render immediate assistance, shall each upon conviction thereof be fined in any sum not exceeding one hundred dollars. [G. S. 1868, ch. 31, § 269, Oct. 31.]

ARTICLE 9.—MISCELLANEOUS OFFENSES.

(2410) Diluted or unclean milk. § 270. Whoever shall knowingly sell, supply, or bring to be manufactured to any cheese manufactory in this state any milk diluted with water or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk"; or whoever shall keep back any part of the milk known as "strippings"; or whoever shall knowingly bring or supply milk to any cheese manufactory that is tainted or partly sour from want of proper care in keeping pails, strainers, or any vessel in which said milk

is kept clean and sweet, after being notified of such taint or carelessness; or any cheese manufacturer who shall knowingly use, or direct any of his employes to use, for his or their individual benefit, any cream from the milk brought to said cheese or butter manufacturers without the consent of all the owners thereof, shall for each and every offense forfeit and pay a sum not less than twenty-five dollars nor more than one hundred dollars, with costs, to be recovered in a criminal action. [Laws 1871, ch. 57, § 1, June 20.]

(2411) Adulteration of cheese and milk. § 271. That whosoever shall knowingly sell to any person or persons, or sell, deliver or bring to be manufactured to any cheese or butter manufactory in this state, any milk diluted with water or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or shall keep back any part of milk known as "strippings," with intent to defraud, or shall knowingly sell milk the product of a diseased animal or animals, or shall knowingly use any poisonous or deleterious material in the manufacture of cheese or butter, shall upon conviction thereof be fined in a sum not less than twenty-five dollars nor more than one hundred dollars, and liable in double the amount of damages to the person or persons, firm, association or corporation upon whom such fraud shall be committed. [Laws 1874, ch. 83, § 1, March 11.]

(2412) Adulteration of provisions. § 272. If any person shall knowingly sell any kind of diseased, corrupt or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars. [G. S. 1868, ch. 31, § 276, Oct. 31.]

(2413) Adulterating food or liquor. § 273. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirit, malt liquor, or other liquor intended for drinking, with any substance injurious

to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and the article so adulterated shall be forfeited and destroyed. [G. S. 1868, ch. 31, § 277, Oct. 31.]

(2414) Adulterating drugs or medicines. § 274. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed. [G. S. 1868, ch. 31, § 278, Oct. 31.]

AN ACT to provide against the adulteration of food and drugs.

[Took effect March 20, 1889.]

(2415) Adulteration of food and drugs. § 275. That no person shall within this state manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act. [Laws 1889, ch. 29, § 1, March 20.]

(2416) Drug. § 276. The term "drug" as used in this act shall include all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food" as used herein shall include all articles used for food or drink by man, whether simple, mixed, or compound. [Laws 1889, ch. 29, § 2, March 20.]

(2417) Adulterated. § 277. An article shall be deemed to be adulterated within the meaning of this act—*First*, in case of drugs, if when sold under or by a name recognized in the United States Pharmacopœia, it differs from the standard of strength, quality or purity laid down therein; *second*, if, when sold under or by a name not recognized in the United States Pharmacopœia, or other standard work of *materia medica*, it differs materially from the standard of strength, quality or purity laid down in such work; *third*, if its strength, quality or purity falls below the professed standard under which it is sold. In the case of food: *First*, if any substance or substances have

been mixed with it so as to lower or depreciate or injuriously affect its quality, strength, or purity; *second*, if any inferior or cheaper substance or substances have been substituted wholly or in part of it; *third*, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; *fourth*, if it is an imitation of or is sold under the name of another article; *fifth*, if it consists wholly or in part of a diseased, decomposed, putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not, or in the case of milk, if it is the produce of a diseased animal; *sixth*, if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better, or of greater value than it really is; *seventh*, if it contains any added substance or ingredient which is poisonous or injurious to health, or any deleterious substance not a necessary ingredient in its manufacture: *Provided*, That the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles of food, if the same be distinctly labeled as mixtures or compounds, and are not injurious to health, and contain no ingredients not necessary to the preparation of a genuine article of such mixtures or compounds, and from which no necessary ingredient in its preparation is eliminated. [Laws, 1889 ch. 29, § 3, March 20.]

(2418) Delivering. § 278. Every person manufacturing, offering or exposing for sale, or delivering to a purchaser, any drug or article included in the provisions of this act, shall furnish to any person interested or demanding the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for analysis, of any such drug or article of food which is in his possession. [Laws 1889, ch. 29, § 4, March 20.]

(2419) Whoever refuses to. § 279. Whoever refuses to comply upon demand with the requirements of section four, or whoever violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined

not exceeding one hundred nor less than twenty-five dollars, or imprisonment exceeding one hundred days nor less than thirty days, or both. And any person found guilty of manufacturing, offering for sale, or selling any adulterated article of food or drug under the provisions of this act, shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of which said person may have been guilty of manufacturing, selling, or offering for sale. [Laws 1889, ch. 29, § 5, March 20.]

Repeal. All acts or parts of acts inconsistent herewith are hereby repealed. [Laws 1889, ch. 29, § 6, March 20.]

This act shall be in force and take effect from and after its publication in the official state paper.

AN ACT for the prevention of cruelty to animals.

[Took effect March 14, 1889.]

(2420) Cruelty to animals. § 280. Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or killed, and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it or unnecessarily fails to provide it with proper food, drink, shelter or protection from the weather, shall be punished by imprisonment in jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. [Laws 1889, ch. 130, § 1, March 14.]

(2421) Having charge or custody of. § 281. Every owner, possessor, or person having the charge or custody of an animal, who cruelly drives or works it when unfit for labor, or cruelly abandons it, or carries it, or causes it to be carried, in or upon a vehicle or otherwise in an unnecessarily cruel or in-

human manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind, shall be punished in the manner provided in the preceding section. [Laws 1889, ch. 130, § 2, March 14.]

(2422) To be appraised. § 282. Any officer or agent of any duly-incorporated humane society may take any animal found abandoned that may appear to be diseased or disabled beyond recovery for any useful purpose, and thereupon shall, as quickly as may be, cause such animal to be appraised under oath by two reputable citizens, who shall view the same in his presence and determine its value, and if such appraised value does not exceed five dollars, such officer may at once cause said animal to be killed in a humane manner. Said society shall thereupon be indebted to the owner for the amount of its value, except when the appraisers determine that the death of the animal was rendered necessary by the owner's willful abandonment or cruelty; and said society shall pay to the appraisers a reasonable compensation for their services. [Laws 1889, ch. 130, § 3, March 14.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1889, ch. 130, § 4, March 14.]

AN ACT to prevent the selling or running at large of domestic animal or animals affected with any infectious or contagious disease.

[Took effect February 27, 1886.]

(2423) Animals diseased. § 283. Any person being the owner of any domestic animal or animals, or having the same in charge, who shall turn out or suffer any such domestic animal or animals having any contagious or infectious disease, knowing the same to be so diseased, to run at large upon any uninclosed land, common or highway, or shall let the same approach within one hundred feet of any highway, or shall sell or dispose of any domestic animal or animals, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any

amount not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months. [Laws 1886, ch. 158, § 1, Feb. 27.]

(2424) Penalties. § 284. Any person violating any of the provisions of this act, in addition to the penalties herein provided shall be liable for all damages that may accrue to the party damaged by reason of said diseased animal or animals imparting disease. [Laws 1886, ch. 158, § 2, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 158, § 3, Feb. 27.]

AN ACT to prevent the spread of disease among swine.

[Took effect Feb. 27, 1886.]

(2425) Animals—swine. § 285. It is hereby made the duty of every person who owns or has the control of any hog that has died of any disease, to bury or burn the same within twenty-four hours after such hog has died; and any person who knowingly fails or refuses to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars. [Laws 1886, ch. 157, § 1, Feb. 27.]

(2426) The same. § 286. Whoever shall knowingly barter or sell any hog afflicted with any disease without giving full information concerning said disease shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars. [Laws 1886, ch. 157, § 2, Feb. 27.]

(2427) The same. § 287. Whoever shall knowingly barter or sell any hog which has died of any disease shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars. [Laws 1886, ch. 157, § 3, Feb. 27.]

(2428) Stream. § 288. Whoever shall throw or deposit a dead hog in any river, stream, creek, or ravine, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be

fined not exceeding one hundred dollars. [Laws 1886, ch. 157, § 4, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 157, § 5, Feb. 27.]

AN ACT in relation to billiard tables, pool tables, and bowling alleys, and to provide for licensing the same.

[Took effect March 25, 1886.]

(2429) Billiard and pool tables. § 289. It shall be unlawful for any person, club or corporation, society, or company of persons to set up or keep any billiard table, pool table, or bowling alley, upon which games are permitted to be played, for hire, or to keep any public billiard hall, pool hall, or bowling alley in any township in this state, outside of any incorporated city, without first taking out and then and there having a license therefor. [Laws 1886, ch. 166, § 1, March 25.]

(2430) Township trustee. § 290. The township trustee, township treasurer and township clerk in each organized township in the state, for the purpose of carrying out the provisions of this act shall constitute the township board of such township, and shall have power to issue licenses for billiard halls, pool halls and bowling alleys within their respective townships, whenever in their judgment it shall be to the interest of their respective townships to grant the same. [Laws 1886, ch. 166, § 2, March 25.]

(2431) License. § 291. Before any license shall be issued as aforesaid, the person or persons to whom said license is issued shall pay to the township treasurer, for the use of such township, such sum of money as the township board may agree upon, not less than fifty dollars, for each billiard table, pool table or bowling alley, for which license said [person or persons] shall designate the place in said township where such billiard table, pool table or bowling alley shall be kept, and the person or persons by whom the same shall be kept, and shall be signed by the township trustee and township treasurer, and attested by the

township clerk, and shall be for the term of one year, unless sooner revoked by said township board. [Laws 1886, ch. 166, § 3, March 25.]

(2432) Misdemeanor. § 292. Any person or persons, or managing agent of any corporation, society or club setting up or keeping any billiard hall, pool hall, billiard table or tables, pool table or tables, bowling alley or alleys, without first taking out and having a license as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction of such offense before any court of competent jurisdiction shall be fined in a sum not less than fifty dollars and not more than one hundred. [Laws 1886, ch. 166, § 4, March 25.]

(2433) License. § 293. The license provided for in this act may be revoked at any time, at the pleasure of said township board. [Laws 1886, ch. 166, § 5, March 25.]

This act shall take effect and be in force from and after its publication in the statute book. [Laws 1886, ch. 166, § 6, March 25.]

(2434) Civil rights; punishment. § 294. That if any of the regents or trustees of any state university, college, or other school of public instruction, or the state superintendent, or the owner or owners, agents, trustees or managers in charge of any inn, hotel or boarding-house, or any place of entertainment or amusement for which a license is required by any of the municipal authorities of the state, or the owner or owners or person or persons in charge of any steamboat, railroad, stage coach, omnibus, street car, or any other means of public carriage for persons or freight within the state, shall make any distinction on account of race, color, or previous condition of servitude, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not less than ten nor more than one thousand dollars, and shall also be liable to damages in any court of competent jurisdiction, to the person or persons injured thereby. [Laws 1874, ch. 49, § 1, April 25.]

(2435) Fines under preceding section. § 295. All fines collected under and by virtue of this act shall be paid over to the public school fund of the county in which the offense was committed. [Laws 1874, ch. 49, § 2, April 25.]

(2436) Fires, kindling. § 296. Any person or persons who shall, between the first day of August and the fifteenth day of the following May, build or kindle or engage in building or kindling any fire upon lands not his or their own, or upon land not occupied by him or them as a tenant or tenants, and leave the same unextinguished, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars, nor less than two dollars, or be imprisoned in the county jail for a period not more than one month nor less than ten days, or by both such fine and imprisonment. [Laws 1872, ch. 129, § 1, June 20.]

AN ACT to punish misrepresentation and deception in the sale of fruit, shade, or ornamental trees, vines, shrubs, plants, bulbs, and roots.

[Took effect Feb. 27, 1886.]

(2437) Fruit trees. § 297. Any person or persons who shall misrepresent, deceive or defraud any person or persons in the sale of any fruit, shade or ornamental tree or trees, or any vine, shrub, plant, bulb, or root, by substituting inferior or different varieties, or who shall falsely represent the name, age or class of any fruit, shade or ornamental tree or trees, or any vine, shrub, plant, bulb, or root, shall be guilty of a misdemeanor, and on conviction be fined not less than ten dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, and shall be liable to the party or parties damaged or injured thereby in treble the amount of all damages sustained, to be recovered in any court having jurisdiction thereof. [Laws 1886, ch. 100, § 1, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper.

Approved Feb. 19, 1886. Published Feb. 27, 1886.

AN ACT to prevent persons from unlawfully using or wearing the badge of the Grand Army of the Republic and insignia of the military order of the Loyal Legion of the United States.

[Took effect Feb. 23, 1889.]

(2438) G. A. R. badges. § 298. Any person who shall willfully wear the badge, insignia, or any button, uniform, or other emblem to be worn or used by members of said orders, or any imitation or counterfeit thereof, of the Grand Army of the Republic, or of the military order of the Loyal Legion of the United States, or who shall use or wear the same to obtain aid or assistance thereby within the state, unless he shall be entitled to use or wear the same under the rules and regulations of the department of Kansas, Grand Army of the Republic, or the commandery in chief of the military order of the Loyal Legion of the United States, shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a term not to exceed thirty days, or a fine not to exceed twenty-five dollars, or by both such fine and imprisonment. [Laws 1889, ch. 129, § 1, Feb. 23.]

This act shall take effect and be in force from and after its publication in the official state paper.

Approved Feb. 21, 1889. Published Feb. 23, 1889.

AN ACT to prevent hunting and shooting on the first day of the week, commonly called Sunday.

[Took effect February 25, 1886.]

(2439) Hunting. § 299. Every person who shall engage in hunting or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum not less than five nor more than twenty dollars. [Laws 1886, ch. 102, § 1, Feb. 25.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 102, § 2, Feb. 25.]

Approved Feb. 19, 1886. Published Feb. 25, 1886.

(2440) Hunting without leave. § 300. That any person who shall hunt with gun, dog, net, or other hunting apparatus,

upon the inclosed grounds or lands of another, without first obtaining leave of the owner so to do, shall be deemed guilty of a misdemeanor, and shall on conviction thereof before a justice of the peace be punished by a fine of not less than five dollars nor more than twenty dollars for each offense. [Laws 1872, ch. 167, § 1, March 28.]

(Williams v. Townsend, 15 K. 564.)

AN ACT to secure to laborers in and about coal mines and manufactories the payment of their wages at regular intervals, and in lawful money of the United States.

[Took effect March 1, 1887.]

(2441) Laborers to be paid. § 301. It shall be unlawful for any person, firm, company or corporation to sell, give, deliver, or in any manner issue directly or indirectly to any person employed by him or it, in payment of wages due for labor, or as advances on the wages of labor not due, any scrip, token, check, draft, order, or other evidence of indebtedness payable to bearer or his assignee otherwise than at date of issue in lawful money of the United States. Any violation of the provisions of this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or imprisonment of not more than thirty days, or both; and the amount of any scrip, token, check, draft, order, or other evidence of indebtedness, sold, given, delivered, or in any manner issued in violation of the provisions of this section, shall be recovered in money at the suit of any holder thereof against the person, firm, company or corporation selling, giving, delivering, or in any manner issuing the same: *Provided*, That nothing contained in this section shall apply to or affect the right of any person or private individual from giving orders on any store or business house or firm in the business or the business or profits of which he or it has no interest directly or indirectly: *Provided further*, That such order shall only be given at the solicitation of the employé of such person or private individual: *Provided further*, That nothing contained in this section shall apply to contracts made and entered into between farmers and their employés, where mutual

arrangements are made between them otherwise. [Laws 1887, ch. 171, § 1, March 1.]

(2442) Coercion of employes. § 302. Whoever compels or in any manner seeks to compel or attempts to coerce an employé of any person, firm or corporation to purchase goods or supplies from any particular person, firm, or corporation, shall be fined not more than one hundred dollars nor less than twenty dollars, or imprisoned not more than sixty days, or both. [Laws 1887, ch. 171, § 2, March 1.]

(2443) County attorney. § 303. The county attorney of any county, upon complaint made to him, shall proceed to prosecute the violators of this act as prescribed in other cases of misdemeanor. [Laws 1887, ch. 171, § 3, March 1.]

This act shall take effect from and after its publication in the official state paper. [Laws 1887, ch. 171, § 4, March 1.]

Approved February 24, 1887. Published March 1, 1887.

(2444) Libel. § 304. A libel is the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy, tending to provoke him to wrath, or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse, or any malicious defamation, made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives and friends. [G. S. 1868, ch. 31, § 270, Oct. 31.]

(State v. Mayberry, 33 K. 441; Castle v. Houston, 19 K. 417; Harrington v. Miles, 11 K. 480; Miles v. Harrington, 8 K. 425; Swartzel v. Dey, 3 K. 244.)

(2445) Composing or circulating. § 305. Every person who makes or composes, dictates or procures the same to be done, or who willfully publishes or circulates such libels, or in any way knowingly and willfully aids or assists in making, publishing or circulating the same, shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars. [G. S. 1868, ch. 31, § 271, Oct. 31.]

(State v. Dowd, 39 K. 412.)

(2446) Defense. § 306. In all prosecutions or indictments for libels, the truth thereof may be given in evidence to the jury, and if it appears to them that the matter as charged as libelous was true, and was published with good motives and for justifiable ends, the defendant shall be acquitted. [G. S. 1868, ch. 31, § 272, Oct. 31.]

(State v. Verry, 36 K. 416; Miles v. Harrington, 8 K. 425.)

(2447) Publication. § 307. No printing, writing or other thing is a libel, unless there has been a publication thereof. [G. S. 1868, ch. 31, § 273, Oct. 31.]

(2448) What is. § 308. The delivery, selling, reading, or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated to one or more persons, or to the party libeled, is a publication thereof. [G. S. 1868, ch. 31, § 274, Oct. 31.]

(2449) Law and fact. § 309. In all indictments or prosecutions for libel, the jury, after having received the direction of the court, shall have the right to determine, at their discretion, the law and the fact. [G. S. 1868, ch. 31, § 275, Oct. 31.]

(State v. Verry, 36 K. 416; State v. Zimmerman, 31 K. 86; Miles v. Harrington, 8 K. 425.)

(2450) Medicine. § 310. That it shall be unlawful for any person within the limit of the state of Kansas, who has not attended two full courses of instruction and graduated in some respectable school of medicine, either of the United States or of some foreign country, or who cannot produce a certificate of qualification from some state or county medical society, and is not a person of good moral character, to practice medicine in any of its departments for reward or compensation, for any sick person within the state of Kansas: *Provided*, That in all cases, when any person has been continuously engaged in the practice of medicine for a period of ten years or more, he shall be considered to have complied with the provisions of this act, and that where persons have been in continuous practice of medicine for five years or more, shall be allowed two years in which to comply with such provisions. [Laws 1870, ch. 68, § 1, May 12.]

(2451) Punishment. § 311. Any person living in the state of Kansas, or any person coming into said state, who shall practice or attempt to practice medicine in any of its departments, or perform or attempt to perform any surgical operation upon any person within the limits of said state, in violation of section one of this act, shall upon conviction thereof be fined in not less than fifty nor more than one hundred dollars for such offense; and upon conviction for a second violation of this act shall, in addition to the above fine, be imprisoned in the county jail of the county in which said offense shall have been committed for the term of thirty days, and in no case wherein this act shall have been violated shall any person so violating receive a compensation for services rendered: *Provided*, That nothing herein contained shall in any way be construed to apply to any person practicing dentistry. [Laws 1870, ch. 68, § 2, May 12.]

(Branner v. Stormont, 9 K. 51.)

(2452) Disposing of property mortgaged. § 312. That any mortgagor of personal property who shall injure, destroy, sell or dispose of such property, or any part thereof, for the purpose of defrauding the mortgagee, or his or her assigns, or shall conceal such property or any part thereof with the intent to hinder, delay or defraud such mortgagee, or his or her assigns, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not less than fifty dollars or more than five hundred dollars, or by both such fine and imprisonment. [Laws 1874, ch. 72, § 1, April 25.]

(State v. Hinkle, 27 K. 308.)

(2453) Dead animal into well, etc. § 313. If any person or persons shall put any dead animals, carcass, or part thereof, into any well or into any spring, brook, or branch of running water, of which use is made for domestic purposes, every person so offending shall on conviction thereof be fined in any sum not less than two nor more than one hundred dollars. [G. S. 1868, p. 385, § 1, Oct. 31.]

(2454) Slaughter-houses. § 314. If any owner or owners, occupier or occupiers of any slaughter-house, or of any premises where hogs, beeves or other animals are slaughtered, shall permit the same to remain unclean, to the annoyance of the citizens of this state, or any of them, every person so offending shall be fined for every such offense any sum not less than five nor more than fifty dollars; and if said nuisance be not removed within five days thereafter, it shall be deemed a second offense against the provisions of this act; and every like neglect of each succeeding five days thereafter shall be considered an additional offense against the provisions of this act. [G. S. 1868, p. 385, § 2, Oct. 31.]

(*State v. Knowles*, 34 K. 393; *State ex rel. v. Crawford*, 28 K. 743.)

(2455) Soap factories, etc., unclean. § 315. If any owner or owners, occupier or occupiers of any soap factory, candle factory, oil factory, glue factory, varnish factory, pork-house, sausage-house or lard-house, shall permit the same to remain unclean, to the annoyance of the citizens of this state, or any of them, to a greater extent than is required for the necessary prosecution of their business, every person so offending shall be fined for every such offense any sum not less than ten nor more than one hundred dollars; and if such nuisance be not removed within five days thereafter, it shall be deemed a second offense against the provisions of this act; and for every like neglect of each succeeding five days thereafter, shall be considered an additional offense against the provisions of this act. [G. S. 1868, p. 385, § 3, Oct. 31.]

(2456) Carcass into river, creek, etc. § 316. If any person or persons shall put any part of the carcass of any dead animal into any river, creek, pond, road, street, alley, lane, lot, field, meadow, or common; or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, to the injury of the health or to the annoyance of the citizens of this state, or any of them, every person so offending shall on conviction thereof before any justice of the peace of the county be fined in a sum not less than one dollar nor

more than twenty-five dollars; and every twenty-four hours during which said owner may permit the same to remain thereafter, shall be deemed an additional offense against the provisions of this act. [G. S. 1868, p. 385, § 4, Oct. 31.]

(State v. Wahl, 35 K. 608.)

(2457) Obscene publications and advertisements.

§ 317. That if any publisher or other person shall by printing, writing, or in any other way publish or cause to be published, or expose to sale any obscene pictures; an account, advertisement or description of any drug, medicine, instrument or apparatus used or recommended to be used for the purpose of preventing conception, or procuring abortion or miscarriage; or shall by writing or printing, in any circular, newspaper, pamphlet or book, or in any way publish or circulate any advertisement or obscene notice herein recited; or shall within the state of Kansas keep for sale or for gratuitous distribution any newspaper, circular, book or pamphlet containing such notice or advertisement of such drugs, medicines, instruments or apparatus; or shall keep for sale any secret nostrum, drug, medicine, instrument or apparatus named; or shall advertise lotteries, or the sale of lottery tickets, such publisher or other person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined not less than fifty nor more than one thousand dollars, or imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment, at the discretion of the court: *Provided*, That nothing in this act shall be so construed as to prevent the publication and sale of standard medical works. [Laws 1874, ch. 89, § 1, April 25.]

AN ACT to suppress and prevent the printing, selling, loaning, making, advertising, giving away, or exposing to view, or showing or taking subscriptions for any indecent or obscene literature, prints, etchings, drawings or papers, or any article or instrument of immoral use, and prescribing the punishment therefor.

(2458) Obscene literature. § 318. Every person or persons who shall bring or cause to be brought into the state, or shall buy, sell or cause to be sold, or shall advertise, lend, give

away, offer, show, exhibit, or shall have in his possession with the intent to sell, lend, give away, offer, show, exhibit, distribute or cause to be distributed, or shall design, copy, draw, photograph, print, etch, or engrave, cut, carve, make, publish, or otherwise prepare or assist in preparing, or shall receive subscriptions for any indecent or obscene book, pamphlet, paper, picture, print, drawing, figure, image, or other engraved, printed or written matter, or any article or instrument of immoral use, or any book, pamphlet, magazine or paper devoted principally or wholly to the publication of criminal news or pictures, or stories of deeds of bloodshed or crime, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than three hundred dollars, or be imprisoned not to exceed thirty days, or both. [Laws 1886, ch. 101, § 1, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 101, § 2, Feb. 27.]

(2458a) Obscene literature. § 318a. Every person or persons who shall, within this state, edit, publish, circulate or disseminate any newspaper, pamphlet, magazine, or any printed paper, devoted largely to the publication of scandals, lechery, assignation, intrigues between men and women, and immoral conducts of persons; or any person or persons who shall knowingly have in his or her possession for sale, or shall keep for sale, or expose for sale, or distribute, or in any way assist in the sale, or shall gratuitously distribute or give away any such newspaper, pamphlet, magazine or printed paper in this state, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the penitentiary for a term of not less than two or more than five years. [Laws 1891, ch. 161, § 1, March 21, 1891.]

(2458b) Publishing. § 318b. A publishing, or editing, in another state and sending said paper into this state, shall be deemed, taken and held to be a publishing, editing and circulating within this state. [Laws 1891, ch. 161, § 2, March 21, 1891.]

AN ACT to prohibit probate judges, clerks of the district court, their deputies, and justices of the peace, from practicing law in their own courts.

[Took effect March 7, 1867.]

(2459) Officers. § 319. That hereafter it shall be unlawful for probate judges or justices of the peace to write any petition or answer, or other pleadings in any proceedings, or perform any service as attorney or counselor at law in any case or cases pending before them, or to be interested in any profits or emoluments arising out of any practice in their own courts, except costs. [Laws 1867, ch. 98, § 1, March 7.]

(2460) Clerk of district court or deputy. § 320. That it shall be unlawful hereafter for any clerk of the district court, or his deputy, in any county in this state, to write any petition, or answer, or other pleadings in any proceedings, or perform any service as an attorney or counselor at law in any case or cases pending in the court in which they are either clerks or deputies, or be interested in any profits or emoluments arising out of any practice in the courts of which they are either clerks or deputies, except costs. [Laws 1867, ch. 98, § 2, March 7.]

(2461) Penalty. § 321. That for any violation of this act, the party so offending shall pay a fine of not less than ten [nor] or more than one hundred dollars, to be recovered in an action before a justice of the peace, in the name of the county, as in civil cases, subject to an appeal to the district court. [Laws 1867, ch. 98, § 3, March 7.]

AN ACT to restrain state and county officers from speculating in their offices.

[Took effect March 8, 1867.]

(2462) Officers speculating. § 322. It shall be unlawful for any state treasurer or any of his deputies or clerks, or any city treasurer or any of his deputies or clerks, or any county officer or any of his deputies or clerks, or any school officer or his deputies or clerks, to buy directly or indirectly, or in any wise become a party in the purchase of or traffic in any state, county or city warrant, or any state, county, city or school scrip, or any bill, account, claim or evidence of indebtedness against

this state, or against any county or city of this state, for any sum less than the full par value expressed upon the face thereof, except such amounts of said state, county, city or school warrants as may be necessary to pay his individual taxes. [Laws 1871, ch. 152, § 1, as amended by Laws 1889, ch. 237, § 1, March 6.]

(2463) Recovery. § 323. Whenever the provisions of the foregoing section shall be violated, the person or persons making such sale may recover back from the officer or person purchasing the same the par value of the warrant, scrip, bill, account, claim or evidence of indebtedness so by such officer or person purchased at a discount, and shall not be liable for the sum or sums of money received by him or them for any such warrant, scrip, or evidence of indebtedness, on the sale of the same to such officer or person. [Laws 1871, ch. 152, § 2, March 23.]

(2464) Warrants to be redeemed. § 324. Every state and county treasurer in this state shall pay for and redeem any state or county warrant presented to him for redemption at the time of its presentation, and if so paid shall mark the same "Paid," with red ink on its face, and the date when paid, at the time of payment, and sign the same: *Provided*, There is money then in his possession sufficient to pay the same; and if there is not sufficient [money] in his hands to pay such warrant, he shall make a certificate of that fact upon the back of said warrant, and date and sign the same. [Laws 1867, ch. 132, § 2, March 8.]

(2465) No officer to retain fees. § 325. That no officer, state or county, or deputy, or clerk of the state officers, or staff officers of the governor, shall retain, under color of his office, any fee, compensation or reward for the performance or doing any service or thing appertaining to the duties of said office, other than is expressly allowed by law. [Laws 1867, ch. 132, § 3, March 8.]

(2466) Officers prohibited from taking contracts or performing work, etc. § 326. That all officers, state and

county, and all officers appointed or elected for the purpose of overseeing and directing any of the public improvements of the state, and all officers holding and exercising any office of trust or profit under and by virtue of any law of the state, be and they are hereby prohibited from taking any contract, or performing or doing, or having performed or done for their own profit, any work in and about the office holden by them, or in or about any work over which they have in whole or in part the supervision, direction, or control, and from furnishing any materials used in any such work, and from furnishing for the use of any institution, public work, county, township, or other interest, the protection of which interest is a part of the duties of his office, any firewood, clothing, materials for building, or other thing required by such institution, public work, county, township or other interest so in the keeping, in whole or in part, of such person. [Laws 1867, ch. 132, § 4, March 8.]

(*Weston v. Lane*, 40 K. 479; *City of Lawrence v. Killam*, 11 K. 499.)

(2467) Penalty. § 327. Any state or city treasurer or any deputy or clerk of any such treasurer, or any county officer or any deputy or clerk of any such officer, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less fifty dollars nor more than five hundred dollars. [Laws 1871, ch. 152, § 3, as amended by Laws 1889, ch. 237, § 2, March 6.]

(2468) Removal for intoxication. § 328. That any state, district, city, county, or township officer of this state, for whose removal from office by impeachment there is no provision, shall in any public place within the state be in a state of intoxication produced by strong drink voluntarily taken, such officer shall be deemed to have committed an offense against the public morals, and on conviction thereof shall be adjudged to have forfeited his office; and his said office shall thereupon be declared vacant by the court trying the cause. [Laws 1875, ch. 122, § 1, May 15.]

(*State ex rel. v. Gilmore*, 20 K. 551.)

(2469) Same for gambling. § 329. If any such public officer of this state, whether the same be a state, district, city, county or township officer, shall engage or participate in, or shall aid or assist, or encourage other persons who are engaged in any kind of gambling, whether the same be by cards, dice, dominoes, billiards, or any game of chance, or a gambling device, by betting money, property, or any other thing of value on such game or gambling device, such officer shall be deemed to have committed an offense against public morals, and upon conviction thereof shall be adjudged by the court having jurisdiction to have forfeited his office; and his said office shall thereupon be declared vacant. [Laws 1875, ch. 122, § 2, May 15.]

(2470) Jurisdiction. § 330. District courts shall have exclusive original jurisdiction of all actions arising under this act, and their judgment shall be subject to review as in other cases. [Laws 1875, ch. 122, § 3, May 15.]

(2471) Proceedings; prosecutor. § 331. Proceedings under this act shall be by petition. The style of action shall be, "The state of Kansas, on petition of ———, plaintiff, vs. ———, defendant." The petition shall set forth the facts alleged against the defendant, verified by oath of any person having knowledge of the facts, and shall ask for the removal of the officer charged. Summons shall issue as in civil cases, and shall be accompanied by a copy of the petition, and shall be served as in other cases. All subsequent proceedings shall be the same as in civil actions, except that the rules of evidence in criminal procedure shall apply, and the prosecuting attorney shall be allowed the same fees as for similar services in misdemeanor cases. The prosecuting attorney of the county or district shall conduct the prosecution of all actions arising under this act, except when that officer is the person charged, and in such case any attorney may prosecute. Prosecutions under this act shall be for the removal of the officer only, and the provisions of this act shall not be construed as in any manner affecting any of the criminal laws now in force in this state, nor the remedies therein granted. [Laws 1875, ch. 122, § 4, May 15.]

(2472) Costs. § 332. In actions provided by this act, when judgment is rendered against the defendant he shall also be adjudged to pay the costs, and such judgment shall be a lien against any unpaid fees or salary which may be due said officer, to be collected as in other cases. If the action fail, judgment shall be rendered against the person or persons complaining for the costs, and execution therefor shall issue immediately. [Laws 1875, ch. 122, § 5, May 15.]

AN ACT to punish fraudulent signatures.

[Took effect Feb. 26, 1867.]

(2473) Signing name without authority. § 333. That whoever shall sign the name of another or any petitioner's name to any petition, memorial, or remonstrance, addressed and presented, or intended for presentation, either to the legislature of this state or to any court or official in this state, without authority from the person whose name is so signed (or where there is no such person whose name is so signed), shall be guilty of a misdemeanor, and upon conviction be fined in a sum not less than fifty dollars and not exceeding one hundred dollars. [Laws 1867, ch. 130, § 1, Feb. 26.]

(2474) Jurisdiction of justices. § 334. Justices of the peace shall have exclusive jurisdiction in all cases arising under this act, subject to appeal as in other cases. [Laws 1867, ch. 130, § 2, Feb. 26.]

AN ACT to punish pickpockets.

[Took effect Feb. 27, 1866.]

(2475) Pickpockets. § 335. Whoever shall unlawfully pick the pockets of another, or unlawfully take from the person of another any personal property, with intent to steal the same, shall upon conviction thereof be deemed guilty of felony, and be punished by imprisonment in the state penitentiary for any term not exceeding four years. [Laws 1866, ch. 105, § 1, Feb. 27.]

This act shall be in force and take effect from and after its publication in the official state paper. [Laws 1866, ch. 105, § 2, Feb. 27.]

AN ACT to prohibit grain dealers, partnerships, companies, corporations or associations from combining or entering into any agreement or contract to pool or fix the price to be paid for grain, hogs, cattle, or stock of any kind whatever, and to provide punishment for violations of the same.

[Took effect March 17, 1887.]

(2476) Pooling. § 336. That it shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnerships, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense. [Laws 1887, ch. 175, § 1, March 17.]

(2477) Penalty. § 337. That in case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, mat-

ter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby, to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employé, or clerk of them or either of them, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding. [Laws 1887, ch. 175, § 2, March 17.]

(2478) Misdemeanor. § 338. That any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them, or either of them, who alone or with any other partnership,

company, corporation, association, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged. [Laws 1887, ch. 175, § 3, March 17.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1887, ch. 175, § 4, March 17.]

(2479) Prize fights. § 339. Any person who shall send or cause to be sent, publish or otherwise make known, any challenge to fight what is commonly known as a prize fight, or shall accept such challenge, or shall engage in such fight, or go into training preparatory to such fight, or act as a trainer for any person contemplating a participation in such fight, and any person acting as aider or abettor, backer, umpire, trainer, second, surgeon, assistant or reporter at such fight, or in preparation for such fight, shall upon conviction thereof be confined in the state penitentiary not less than one year nor more than ten years. [Laws 1871, ch. 112, § 1, Feb. 22.]

(2480) Engineer abandoning locomotive. § 340. If any locomotive engineer, in furtherance of any combination or agreement, shall willfully and maliciously abandon his locomotive upon any railroad at any other point than the regular schedule destination of such locomotive, he shall be fined not less than twenty dollars nor more than one hundred dollars, and

confined not less than twenty days nor more than ninety days in the county jail. [Laws 1879, ch. 134, § 1, March 15.]

(2481) Obstructing business of railroad, etc. § 341. If any person or persons shall willfully and maliciously, by any act or by means of intimidation, impede, or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company, or other corporation, firm or individual in this state, or of the regular running of any locomotive engine, freight or passenger train of any such company, or the labor and business of any such corporation, firm, or individual, he or they shall on conviction thereof be punished by a fine of not less than twenty dollars nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. [Laws 1879, ch. 134, § 2, March 15.]

(2482) Conspiring to obstruct or impede. § 342. If two or more persons shall willfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company, or any other corporation, firm or individual in this state, or to obstruct, hinder, or impede, except by due process of law, the regular running of any locomotive engine, freight or passenger train on any railroad, or the labor or business of any such corporation, firm, or individual, such persons shall on conviction thereof be punished by fine not less than twenty dollars nor more than two hundred dollars, and confined in the county jail not less than twenty days nor more than ninety days. [Laws 1879, ch. 134, § 3, March 15.]

(2483) Construction. § 343. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company, or such other corporation, firm, or individual, whether by concert of action or otherwise, except as is provided in section one of this act. [Laws 1879, ch. 134, § 4, March 15.]

AN ACT relating to steam threshing-machines, saw-mills, and steam traction engines, and their passage on the public highway.

[Took effect Feb. 27, 1886.]

(2484) Roads; steam engines. § 344. All persons owning, controlling, operating or managing steam threshing-machines, saw-mills, or steam traction engines of any kind, in moving the same over the public highway are required to lay down planks not less than one foot wide, three inches in thickness, and of sufficient length, on the floor of all bridges and culverts situate on the public highway, while crossing the same, for the wheels of said engines of any kind to run on while crossing such bridge or culvert: *Provided*, That this section shall not apply to any machine or engine not exceeding one ton in weight. [Laws 1886, ch. 144, § 1, Feb. 27.]

(2485) Shut off the steam. § 345. All persons owning, controlling, operating or managing steam traction engines of any kind, in moving the same along the public [highway], are required on meeting any person or persons in vehicles of any kind, drawn by horses, mules or other animals, to turn to the right, giving as much of the public highway as possible, and then shut off the steam and come to a halt at the distance of one hundred yards from the person or persons so met, and to remain with steam down and halted until said person or persons shall have passed at a distance of one hundred yards from the place of halting on said highway: *Provided*, That nothing in this section shall prevent anyone operating such engine drawing the same by team or teams without making the halt or halts above referred to. [Laws 1886, ch. 144, § 2, Feb. 27.]

(2486) Village or city. § 346. Any person or persons owning, controlling, operating or managing any steam traction engine, shall, in passing through any village, town, or city, attach a team thereto for the purpose of assisting in drawing the same. [Laws 1886, ch. 144, § 3, Feb. 27.]

(2487) Misdemeanor. § 347. Any person or persons violating the provisions of this act shall be deemed guilty of a mis-

demeanor, and shall upon conviction therefor be fined in a sum of not less than five dollars nor more than two hundred dollars for each offense. [Laws 1886, ch. 144, § 4, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 144, § 5, Feb. 27.]

Approved Feb. 20, 1886. Published Feb. 27, 1886.

(2488) Small-pox. § 348. If any person shall inoculate himself or any other person, or shall suffer himself to be inoculated with the small-pox, within this state, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the state prison not more than three years nor less than one year. [G. S. 1868, ch. 31, § 279, Oct. 31.]

AN ACT prohibiting the selling, giving or furnishing of tobacco, opium, or other narcotics in any form, to minors under sixteen (16) years of age.

[Took effect March 5, 1889.]

(2489) Tobacco, opium, etc. § 349. That it shall be unlawful for any person or persons in this state to sell, give or furnish any cigar, cigarette, or tobacco in any form, opium or any other narcotic in any form, to any minor under sixteen (16) years of age. [Laws 1889, ch. 256, § 1, March 5.]

(2490) Misdemeanor. § 350. The violation of any provision under this act shall constitute a misdemeanor, and any person found guilty thereof shall be fined in any sum not less than five (\$5) dollars nor exceeding twenty-five (\$25) dollars for each and every such offense. [Laws 1889, ch. 256, § 2, March 5.]

(2491) Narcotic. § 351. The provisions of this act shall not apply to the sale of any narcotic made upon the prescription of a regular practicing physician. [Laws 1889, ch. 256, § 3, March 5.]

All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. [Laws 1889, ch. 256, § 4, March 5.]

This act shall take effect and be in force from and after its

publication in the official state paper. [Laws 1889, ch. 256, § 5, March 5.]

Approved Feb. 27, 1889. Published March 5, 1880.

(2492) Trespass; defacing public buildings. § 352.

Any person who shall cut, carve, mark, etch or engrave any character, figure, letter or name upon any public building within this state, or who shall in any other manner mar or deface or injure such building, or who shall cut, mar or injure any tree, shrub, plant, fence, or any other public property in, on or around the grounds upon which such building is situated, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [Laws 1881, ch. 105, § 1, March 11.]

(2493) Officers shall arrest. § 353. It is hereby made the duty of any sheriff, constable, police officer, or the janitor or janitors of any public building, who shall detect any person marring or defacing or injuring any public building, or injuring any such tree, shrub, plant, fence, or any other public property, to forthwith arrest such person and take him before some justice of the peace within the county where such building is located. [Laws 1881, ch. 105, § 2, March 11.]

(2494) Tried without delay. § 354. The justice of the peace before whom any person shall be brought shall without delay hear the case, and if upon the trial it be proven to the satisfaction of such justice that the person charged is guilty of any of the offenses specified in section one of this act, he shall be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty or more than ninety days, or by both such fine and imprisonment at the discretion of the justice. [Laws 1881, ch. 105, § 3, March 11.]

(2495) Fees. § 355. The justice of the peace, sheriff, constable, police officer or janitor performing the duties required of them under this act, shall receive the same fees as provided for in other cases of misdemeanors. All fines collected under

the provisions of this act shall be paid into the county treasury of the county in which such offense is committed for the use of the county school fund. [Laws 1881, ch. 105, § 4, March 11.]

(2496) Notice posted. § 356. It shall be the duty of the officer or officers in charge of any of the public buildings and grounds within this state to keep posted in a conspicuous place in such building or on said grounds a printed copy of this act, with the word "Caution" in large letters at the top. [Laws 1881, ch. 105, § 5, March 11.]

(2497) Definition. § 357. The words "public building" mentioned in this act shall include any building owned or occupied or used by either the state, county, city, township, or school district. [Laws 1881, ch. 105, § 6, March 11.]

AN ACT to punish malicious mischief.

[Took effect Feb. 27, 1886.]

(2498) Deface property. § 358. Any person who shall willfully and maliciously destroy, deface, remove or injure the property of another, public or private, shall on conviction be deemed guilty of a misdemeanor, and punished by fine not less than five dollars nor more than five hundred dollars, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. [Laws 1886, ch. 104, § 1, Feb. 27.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1886, ch. 104, § 2, Feb. 27.]

Approved Feb. 19, 1886. Published Feb. 27, 1886.

AN ACT to declare unlawful trusts and combinations in restraint of trade and products, and to provide penalties therefor.

[Took effect March 2, 1889.]

(2499) Trusts. § 359. That all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale

of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful, and void. [Laws 1889, ch. 257, § 1, March 9.]

(2500) Corporations. § 360. It shall not be lawful for any corporation to issue or to own trust certificates, other than the regularly and lawfully authorized stock thereof, or for any corporation, agent, officer or employé, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. [Laws 1889, ch. 257, § 2, March 9.]

(2501) All persons. § 361. That all persons entering into any such arrangement, contract, agreement, trust, or combination, or who shall, after the passage of this act, attempt to carry out or act under any such arrangement, contract, agreement, trust, or combination described in sections one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be sub-

ject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court. [Laws 1889, ch. 257, § 3, March 9.]

(2502) Persons injured. § 362. That any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination described in sections one or two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed. [Laws 1889, ch. 257, § 4, March 9.]

(2503) Action; defense. § 363. That when an action at law or suit in equity shall be commenced in any court of this state, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in sections one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof. [Laws 1889, ch. 257, § 5, March 9.]

(2504) Violation. § 364. That the purchase, sale or manufacture of any goods, wares, merchandise or other commodities in this state by any person or corporation who has entered into any such arrangements, contracts, agreements, trusts or combinations in any other state or territory, as described in sections one or two of this act, or the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stock broker of any such corporation, as a trustee, committee, or in any capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties. [Laws 1889, ch. 257, § 6, March 9.]

(2505) County Attorney. § 365. It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. And whenever the county attorney shall be unable or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, informations, petitions and papers, as the county attorney is authorized to sign, verify, or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fees that the county attorney would be entitled to for like services, to be taxed and collected in the same manner. [Laws 1889, ch. 257, § 7, March 9.]

(2506) Sheriffs, duty of. § 366. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section he shall upon convic-

tion be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. [Laws 1889, ch. 257, § 8, March 9.]

(2507) District courts, duty of. § 367. It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act. [Laws 1889, ch. 257, § 9, March 9.]

(2508) Trusts. § 367*a*. That it shall be unlawful for any two or more persons or corporations in this state, engaged in the business of buying or selling live stock for others on commission, to enter into any combination, agreement or arrangement for the purpose of or which tends to fix or control the charges or commissions to be demanded or received by such persons or corporations for their services for the sale of live stock. [Laws 1891, ch. 158, § 1.]

(2508*a*) Corporation. § 367*b*. That it shall be unlawful for any person or persons, or corporation or corporations, engaged in buying or selling live stock for others upon commission, to continue with or enter into any agreement or arrangement with any person or persons, or corporation or corporations engaged in the business of purchasing live stock, either for themselves or upon commission, either for themselves or as the agents for others, which shall have for its purpose or in any respects tends to prevent full and free competition in the business of selling live stock upon commission for others, or which has for its purpose or tends to the fixing or maintaining any sum as a minimum commission for the services of selling live stock for others. And it shall be unlawful for any person or persons, or corporation or corporations, doing business in this state, to be or become a member of any society, association or corporation whose by-laws provide for and fix the minimum commission for the selling of live stock for others, or whose by-laws prohibit its

members from purchasing live stock from persons who are not members of such society, association, or corporation; and all such by-laws of any society, association or corporation doing business in this state are hereby declared illegal and void, and any person attempting directly or indirectly to enforce or make the same operative or effectual shall be deemed guilty of a misdemeanor; and any corporation which shall attempt to have any such by-laws enforced, or shall obey such by-laws and refuse to buy from others on account of such by-laws, shall, in addition to the penalties hereinafter provided therefor, forfeit its charter. [Laws 1891, ch. 158, § 2.]

(2508b) Members. § 367c. That all persons entering into any such combination, agreement, or arrangement, or who shall after the passage of this act attempt to carry out or act under any such combination, agreement or arrangement described in sections 1 and 2 of this act, either on his own account or as the agent for another, or as an officer, stockholder or member of any corporation, society or association, or as a trustee, committee, or in any capacity whatever, or who shall in any respect violate either of the foregoing sections, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred (500) dollars nor more than one thousand (1,000) dollars, or be imprisoned in the county jail not less than thirty (30) days nor more than six (6) months, or by both fine and imprisonment, for each and every such offense. [Laws 1891, ch. 158, § 3.]

(2509) Vagrancy. § 368. Any person who may be found loitering around houses of ill-fame, gambling-houses, or places where liquors are sold or drank, without any visible means of support, or shall be the keeper or inmate of any house of ill-fame or gambling-house, or engaged in any unlawful calling whatever, or any able-bodied married man who shall neglect or refuse to provide for the support of his family, shall be deemed a vagrant, and upon conviction thereof may be fined in any sum not exceeding five hundred dollars, or by imprisonment in the

county jail not exceeding one year. [G. S. 1868, ch. 31, § 280, Oct. 31.]

(2510) Working of vagrants. § 369. The board of county commissioners shall make such regulations for the working of vagrants as will keep them as nearly as possible in constant employment. [G. S. 1868, ch. 31, § 281, Oct. 31.]

(*In re Lewis*, 31 K. 78.)

(2511) Carrying deadly weapons. § 370. Any person who is not engaged in any legitimate business, any person under the influence of intoxicating drink, and any person who has ever borne arms against the government of the United States, who shall be found within the limits of this state carrying on his person a pistol, bowie-knife, dirk, or other deadly weapon, shall be subject to arrest upon charge of misdemeanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, at the discretion of the court. [G. S. 1868, ch. 31, § 282, Oct. 31.]

(2512) Weapons to minors. § 371. Any person who shall sell, trade, give, loan or otherwise furnish any pistol, revolver, or toy pistol, by which cartridges or caps may be exploded, or any dirk, bowie-knife, brass knuckles, slung-shot, or other dangerous weapons, to any minor, or to any person of notoriously unsound mind, shall be deemed guilty of a misdemeanor, and shall upon conviction before any court of competent jurisdiction be fined not less than five nor more than one hundred dollars. [Laws 1883, ch. 105, § 1, March 6.]

(2513) Possession of minor. § 372. Any minor who shall have in his possession any pistol, revolver, or toy pistol, by which cartridges may be exploded, or any dirk, bowie-knife, brass knuckles, slung-shot, or other dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction before any court of competent jurisdiction shall be fined not less than one nor more than ten dollars. [Laws 1883, ch. 105, § 2, March 6.]

ARTICLE 10.—INTOXICATING LIQUOR.

AN ACT to prohibit the selling of intoxicating liquors in the unorganized counties of the state of Kansas.

[Took effect March 6, 1867.]

(2514) Selling or giving away intoxicating liquors.

§ 373. That any person who shall, directly or indirectly, sell, barter or give away any spirituous, vinous, fermented or other intoxicating liquors within the unorganized counties and territories of the state of Kansas, shall on conviction thereof be fined a sum of not less than one hundred [nor] or more than one thousand dollars, or by confinement in the county jail for a term not less than four nor more than twelve months, or by both such fine and imprisonment. [Laws 1867, ch. 81, § 1, March 6.]

(2515) Jurisdiction of justices. § 374. That justices of the peace of the organized counties to which the unorganized counties or territory of this state, as set forth in section one, are attached, shall have jurisdiction of and power to summon, try and determine cases arising under this act; and for that purpose shall have power to impanel a jury of six householders of the vicinage, who, if they find the defendant guilty, shall assess the fine to be paid by him, or the imprisonment to which he shall be subject, subject only to the provisions of this previous section. [Laws 1867, ch. 81, § 2, March 6.]

(2516) Property liable for fines and costs. § 375. That for all fines and costs assessed against any person or persons, for any violation of this act, the real estate and personal property, of every kind, without exemption, shall be liable for the payment thereof; and such fines and costs shall be a lien upon such real estate and property until paid. [Laws 1867, ch. 81, § 3, March 6.]

(2517) Indictment. § 376. That upon the trial for this offense, it shall not be necessary to aver the kind or the character of the liquor alleged to have been sold, bartered, or given away, but it shall be sufficient if said indictment allege the liquor so sold, bartered, or given away, was intoxicating. [Laws 1867, ch. 81, § 4, March 6.]

(2518) Persons making complaint. § 377. Any person who shall make complaint or give voluntary information that shall lead to conviction under this act shall be entitled to a sum not less than fifty nor more than two hundred dollars, to be paid out of any fines which may be collected under the provisions of this act. [Laws 1867, ch. 81, § 5, March 6.]

(2519) Drunkenness. § 378. If any person shall be drunk in any highway, street, or in any public place or building, or if any person shall be drunk in his own house, or any private building or place, disturbing his family or others, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding twenty-five dollars, or by imprisonment in the county jail for a period not exceeding thirty days. [Laws 1883, ch. 104, § 1, March 6.]

(State v. Brown, 38 K. 390.)

(2520) Limitation. § 379. Prosecution under this act must be commenced within thirty days after the said misdemeanor is alleged to have been committed. [Laws 1883, ch. 104, § 2, March 6.]

AN ACT to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes.

[Took effect May 1, 1881.]

(2521) Prohibited. § 380. Any person or persons who shall manufacture, sell or barter any spirituous, malt, vinous, fermented or other intoxicating liquors, shall be guilty of a misdemeanor, and punished as hereinafter provided: *Provided, however,* That such liquors may be sold for medical, scientific and mechanical purposes, as provided in this act. [Laws 1881, ch. 128, § 1, May 1.]

(Bowman v. Phillips, 41 K. 394; Flersheim v. Cary, 39 K. 178; City of Lyons v. Cooper, 39 K. 324; McBratney v. Chandler, 23 K. 692; Gerlach v. Skinner, 34 K. 86; State v. Balch, 81 K. 465; City of Topeka v. Myers, 34 K. 500; Feineman v. Sachs, 38 K. 621; Distilling Co. v. Nutt, 34 K. 724; State *ex rel.* v. Foster, 32 K. 14; Korman v. Henry, 32 K. 49, 50; State v. Wilgus, 32 K. 126; State v. Krum, 32 K. 372; Foster v. State, 32 K. 765; State v. O'Connell, 31 K. 383; State

ex rel. v. City of Topeka, 31 K. 422, 452; *State v. City of Topeka*, 30 K. 653; *State ex rel. v. Wilson*, 30 K. 661; *Jockers v. Borgman*, 29 K. 109; *State v. Mugler*, 29 K. 252; *State v. Shackle*, 29 K. 341; *State v. Estabrook*, 29 K. 739; *State v. Sterns*, 28 K. 154; *Franklin v. Westfall*, 27 K. 614; *State v. Kuhuke*, 26 K. 405; *Intoxicating Liquor Cases*, 25 K. 751; *State v. Simmons*, 21 K. 685; *Snider v. Koehler*, 17 K. 432; *Glass v. Alt*, 17 K. 444; *McCarty v. Gordon*, 16 K. 35; *City of Emporia v. Volmer*, 12 K. 622; *State v. Pitman*, 10 K. 593; *State v. Volmer*, 6 K. 371.)

(2522) Unlawful to sell without permit. § 381. It shall be unlawful for any person or persons to sell or barter for medical, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggists' permit therefor from the probate judge of the county wherein such druggist may be doing business at the time; and such probate judge is hereby authorized, in his discretion, to grant a druggists' permit for the period of one year to any person of good moral character who is a registered pharmacist under the law of this state, and lawfully and in good faith engaged in the business of a druggist in his county, and who in his judgment can be intrusted with the responsibility of selling said liquors for the purposes aforesaid, in the manner hereinafter provided; and said judge may at any time in his discretion revoke such permit. In order to obtain a druggists' permit under this act, the applicant shall file in the office of the probate judge of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and twenty-five reputable freeholders having the qualifications of electors, and twenty-five reputable women over twenty-one years of age, of the township, city of third class, or ward of any other city wherein such business is located, setting forth: *First*, The city or township and particular place therein where such business is located, and that the applicant is a person of good moral character, and does not use intoxicating liquors as a beverage, and can be intrusted with the responsibility of selling the same; *second*, that said applicant is a pharmacist aforesaid, and is lawfully and in good faith engaged personally in the business of a druggist as the proprietor

thereof at the place designated in the petition, and is well versed in his profession; *third*, that said applicant has, in his said business, exclusive of intoxicating liquors and fixtures, a stock of drugs, if in any city, of the value of at least one thousand dollars, and if elsewhere, of the value of at least five hundred dollars. Before any such petition shall be heard, or any permit issued to such applicant, he shall publish for at least thirty days next prior thereto a notice published in some newspaper in the township or city where such business is located, or if none be published therein then in some paper of general circulation therein, stating the time and place set by such judge for the hearing of such petition. The applicant shall be required to prove the truthfulness of each and every statement contained in such petition, and the county attorney of such county shall, and any other citizen of the county may, appear and cross-examine the witnesses of the applicant, and may introduce evidence in rebuttal of the evidence offered by the applicant. If satisfied that the signatures to such petition were signed by such persons, and that such petitioners are citizens of such township, city, or ward, and that the statements in said petition are all true, the probate judge may in his discretion grant a permit to the applicant to sell intoxicating liquors for medical, mechanical and scientific purposes only; and such permit shall be recorded upon the journal of the probate court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein said business is carried on before it shall be of any validity. Before such permit shall be of any validity such druggist shall file with the probate judge, to be approved by him, a good and sufficient bond to the state of Kansas in the sum of one thousand dollars, conditioned that such applicant and anyone in his employ will neither use, sell, barter, nor give away any intoxicating liquors in violation of law; and on violation of the provisions of said bond the same shall thereby become forfeited, and the conviction of such pharmacist or anyone in his employ shall be deemed *prima facie* evidence of such violation. Any applicant or any

citizen feeling himself aggrieved by the decision of the probate judge may within ten days thereafter, upon filing a bond made payable to the state of Kansas in the sum of fifty dollars, to be approved by the probate judge, conditioned that he will prosecute the cause to its speedy determination and pay the costs occasioned by such appeal if the order of the probate judge shall be sustained, prosecute the cause upon appeal or error to the district court. The procedure in any case taken on error to the district court from the order of the probate judge shall be as prescribed by article twenty-two of the code of civil procedure so far as applicable, and a case or bill of exceptions may be made, signed and certified by the probate judge as in said article provided. If the district court shall find that the probate judge has abused his discretion it shall have power to cause the probate judge to comply with its judgment, otherwise the order of the probate judge shall be by the district court affirmed. No appeal shall be allowed from the order of the district court. If the order of the probate judge shall be reversed, the costs shall be paid by the county. If at any time there shall be filed with the probate judge a petition stating that any druggist, naming him, who has a permit to sell intoxicating liquors, is not in good faith conforming to the provisions of this act or the act to which this is amendatory and supplemental, verified by the affidavit of at least one of the petitioners hereinafter named, and signed by twenty-five reputable men and twenty-five reputable women, all of whom reside in the township, city or ward in which the business of such druggist is carried on, requesting that the permit of such druggist be canceled, the probate judge shall immediately issue an order citing such druggist to appear before him on a day named, not more than thirty days from the issuing of such order, at which time the question of the cancellation of such permit shall be considered. Such examination shall be conducted in the same manner in all respects as is herein provided for the hearing of the original petition for granting such permit, and such probate judge shall, if there are reasonable grounds for believing such druggist is not

in good faith carrying out all the provisions of this act or the act to which this is amendatory, cancel such permit. An appeal may be had from the decision of such probate judge to the district court as herein provided for appeals from the application for a permit: *Provided*, The permit of such druggist shall be inoperative till such appeal is finally decided: *Provided further*, This shall not prevent the probate judge from canceling any permit at any time on his own motion or otherwise. If any probate judge shall issue a permit to any person not registered as a pharmacist, or shall knowingly grant the same to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist as proprietor thereof, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars; and if any person shall sign the petition as provided herein of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty dollars nor more than one hundred dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the probate judge, the applicant shall pay a fee of five dollars to the probate judge, who shall pay the same into the county treasury on or before the first day of the following month, for the benefit of the general revenue fund. No permit now existing shall be of any validity after the first day of May, A. D. 1887. [Laws 1881, ch. 128, § 2, as amended by Laws 1885, ch. 149, § 1, as amended by Laws 1887, ch. 165, § 1, March 8.]

City of Lyons v. Cooper, 39 K. 324; State v. Whisner, 35 K. 271; *In re Gonnell*, 34 K. 275; State v. Schmidt, 34 K. 399; State v. Copp, 34 K. 522; State v. Robinson, 1 K. 188; Stanley v. Monnet, 34 K. 708; Martin v. Probate Judge, 32 K. 146, 147; State v. Nye, 32 K. 201, 204; State v. Fleming, 32 K. 591; Miller v. Minney, 31 K. 522; State v. Cook, 30 K. 82; State v. City of Topeka, 30 K. 653; Jockers v. Borgman, 29 K. 109; State v. Shackles, 29 K. 341; State v. Estabrook, 29 K. 739; State v. Hunt, 29 K. 762; State v. Schweiter, 27 K. 499; State v. Pierce, 26 K. 777; Intoxicating Liquor Cases, 25 K. 751; Haug v. Gillett, 14 K. 140.)

(2523) Physician prescribe; evading law. § 382. Any physician who is lawfully and regularly engaged in the practice of his profession as a business, and who, in case of actual need, shall deem any of the liquors mentioned in section one of this act necessary for the health of his patients, may give such patient a written or printed prescription therefor, or may administer the same himself. But no such prescription shall be given or liquors administered except in case of actual need, and where in his judgment the use of intoxicating liquors is necessary. And every physician who shall give such prescription or administer such liquors in violation of this act, and every physician who shall give to or write for any person a prescription for intoxicating liquors for the purpose of enabling or assisting any person to evade any of the provisions of this act, or for the purpose of enabling or assisting any person to obtain any intoxicating liquors for use as a beverage, or to be sold or disposed of in any manner, in violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than ten days nor more than ninety days. [Laws 1881, ch. 128, § 3, as amended by Laws 1885, ch. 149, § 2, March 10.]

(State v. Fleming, 32 K. 592; State v. Curtis, 29 K. 384.)

(2524) Druggist may sell for medical purposes. § 383. Any druggist having a permit to sell intoxicating liquors under the provisions of this act may sell the same only by himself in person, or by a clerk who is a registered pharmacist or assistant pharmacist under the laws of this state, for medical purposes only, upon the printed or written affidavit of the applicant setting forth the particular medical purpose for which such liquor is required, the kind and quantity desired; that it is necessary and actually needed for the particular purpose by the patient to be named; and that it is not intended for a beverage, nor to sell or give away; and that the applicant is over twenty-one

years of age, which affidavit shall be in the following form, and subscribed by the applicant in ink:

STATE OF KANSAS, COUNTY OF _____, ss.

Date _____, No. _____.

I, the undersigned, do solemnly swear that my real name is _____; that I reside at _____, _____ county, state of _____; that _____ of _____ is necessary and actually needed by _____, to be used as medicine for the disease of _____; that it is not intended for a beverage, nor to sell, nor to give away; and that I am over twenty-one years of age. I therefore make application to _____, druggist, for said liquor.

_____, Applicant.

Subscribed in my presence and sworn to before me, this _____ day of _____.

_____, Pharmacist.

And such druggist may sell intoxicating liquors for mechanical and scientific purposes only, upon the written or printed affidavit of the applicant, setting forth the particular purpose for which such liquor is required, the kind and quantity desired, that it is not intended to be used as a beverage, nor to sell, nor to give away, and that it is intended only for his own use, and that the applicant is over twenty-one years of age. Such affidavit shall be in the following form:

STATE OF KANSAS, COUNTY OF _____, ss.

Date _____, No. _____.

I, the undersigned, do solemnly swear that my real name is _____; that I reside at _____, _____ county, state of _____; that _____ of _____ is required by myself, to be used for _____ purposes, to be used for _____; that it is not intended for a beverage, nor to sell, nor to give away; and that I am over twenty-one years of age. I therefore make application to _____, druggist, for said liquor.

_____, Applicant.

Subscribed in my presence and sworn to before me, this _____ day of _____.

_____, Pharmacist.

And there shall be but one sale and one delivery on any one affidavit; but no druggist shall permit the drinking on his premises, nor in any apartment connected therewith and under his control, any of the intoxicating liquors purchased by affidavit or otherwise: *Provided*, Such druggist shall be permitted to sell any of the liquors mentioned herein, in quantities not less than one gallon, to any other druggist within the state holding a permit as provided in this act. The affidavits provided for in this section shall be made before the pharmacist or assistant pharmacist making such sale of liquors, upon proper printed blanks, which it is hereby made the duty of the county clerk of the county in which such sales are made to furnish to such druggists at a cost equal to the actual and necessary outlay made therefor

by him. Such blanks shall be in series of one hundred each, numbered from one to one hundred consecutively, and bound in book form, each series being of uniform style throughout, except that no two blanks of the same series shall be of the same number. It shall be the duty of the county clerk to indorse each such book with the date of delivery and to whom made, to sign such indorsement, and attest the same with his official seal, and to keep two exact printed copies, except as to numbers, of the blanks of each series, one of which shall be filed in his office and one in the probate judge's office; he shall also keep a record of the series, and of the number of each series, of such blanks furnished to each druggist, and shall within ten days after the same are delivered to such druggist file a copy thereof, together with a copy of the blank affidavits, in the office of the probate judge of his county. For such services the county clerk shall be entitled to a fee of twenty-five cents for each series of blanks so furnished, to be paid by the druggist obtaining such blanks. All pharmacists and assistant pharmacists are hereby empowered to administer oaths for the purposes of this act, and no such affidavit shall be received by any pharmacist or assistant pharmacist until it shows on its face that it has been properly subscribed and sworn to by the applicant. The affidavits provided for in this section shall be retained by the druggist in the original book form, and on or before the first day of each month shall, together with the affidavit of such druggist that the liquors therein mentioned are all of the intoxicating liquors sold by him during the month, except the liquors sold to other druggists, be filed in the office of the probate judge who issued his permit, where they shall be safely kept for the period of two years from the date of the filing. Before said affidavit shall be received or filed by said probate judge he shall make strict examination of the copies of affidavits and record of numbers thereof furnished him by the county clerk, and ascertain whether such druggist has returned all affidavits furnished him in blank by the county clerk; and if any such affidavit or blank

is missing, said probate judge shall require such druggist to file instead thereof his affidavit showing as near as he can what has become of such affidavit or blank. And any person having a permit to sell intoxicating liquors under the provisions of this act shall, each month, at the time he files the affidavit herein provided for, also file with the probate judge an affidavit setting forth the amounts and kinds of liquors, as nearly as can be done, which such person or firm of which he is a member has on hand on the day such affidavit is made, as well as the amount and kinds of liquors he has purchased or procured during the preceding month, and the name or names of the persons, companies or corporations, and their place of doing business, from whom and the dates on which such liquors were purchased or procured. For each series of affidavits filed under the provisions of this act the probate judge shall collect one dollar and fifty cents from the druggist filing the same, or the proper proportionate part thereof for the number filed, which shall be paid by him on the first day of each month into the county treasury for the benefit of the general county fund. The probate judge shall receive no fees for his services under this act, except a salary of fifteen dollars per annum for each one thousand inhabitants in such county, the number to be determined by the last annual census return of such county, but in no case shall such salary exceed the sum of one thousand dollars per annum, to be paid by the county commissioners as other salaries. Every person whose affidavit so made for the purpose of obtaining intoxicating liquors shall be false in any material matter shall be deemed guilty of perjury, and shall be punished by confinement and hard labor for a period not exceeding two years, or by confinement in the county jail not less than six months. Any person who shall subscribe any name or character other than his own name to any affidavit for the purpose of obtaining intoxicating liquors as provided herein, shall be deemed guilty of forgery in the fourth degree, and punished therefor as now provided by law for forgery in such degree. Any person who shall sell or furnish any

intoxicating liquors so obtained by him upon affidavit or certificate to others as a beverage, or shall use the same as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. Every such druggist shall keep a book wherein shall be recorded, daily, all sales of intoxicating liquors made by him or his employes, showing the name and residence of the purchaser, the kind and quantity of the liquors sold, the purpose for which it was sold, and the date of the sale. Such record and affidavits shall be open for the inspection of the public at all reasonable times during business hours, and any person so desiring may take memoranda or copies thereof. [Laws 1881, ch. 128, § 4, as amended by Laws 1885, ch. 149, § 3, as amended by Laws 1887, ch. 165, § 2, March 8.]

(*State v. Skinner*, 34 K. 256; *In re Gilson*, 34 K. 641; *State v. Fleming*, 32 K. 588; *Jockers v. Borgman*, 39 K. 109; *State v. Shackles*, 29 K. 341; *State v. Estabrook*, 29 K. 739; *State v. Hunt*, 29 K. 762; *State v. Sterns*, 28 K. 154; *State v. Schmidt*, 34 K. 399; *State v. Copp*, 34 K. 522.)

(2525) Shall not manufacture except for. § 384. No person shall manufacture or assist in the manufacture of intoxicating liquors in this state except for medical, scientific and mechanical purposes. Any person or persons desiring to manufacture any of the liquors mentioned in this act for medical, scientific and mechanical purposes shall present to the probate judge of the county wherein such business is proposed to be carried on, a petition asking a permit for such purpose, setting forth the name of the applicant, the place where it is desired to carry on such business, and the kind of liquor to be manufactured. Such petition shall have appended thereto a certificate signed by at least one hundred resident electors of the ward of the city of the first or second class, or by a majority of the resident electors of the township or city of the third class, wherein such applicant desires to manufacture such intoxicants, certifying that such applicant is a person of good moral character,

temperate in his habits, and a proper person to manufacture and sell intoxicating liquors. Such applicant shall file with said petition a bond to the state of Kansas in the sum of ten thousand dollars, conditioned that for any violation of the provisions of this act said bond shall be forfeited. Such bond shall be signed by such applicant or applicants as principal or principals, and by at least three sureties, who shall justify under oath in the sum of seven thousand dollars each, over and above all indebtedness and exemptions, and who shall be of the number signing said petition. The probate judge shall consider such petition and bond, and if satisfied that such petition is true, and that the bond is sufficient, may in his discretion grant a permit to manufacture intoxicating liquors for medical, scientific and mechanical purposes. The said permit, the order granting the same, and the bond and justification thereon, shall be forthwith recorded by said probate judge in the same manner and with like effect as in case of a permit to sell such liquors as provided in this act. Such manufacturer shall keep a book wherein shall be entered a complete record of the sales made, the dates thereof, the name and residence of the purchasers, the kind and quantity of liquors sold, and the price received or charged therefor. An abstract of such record, verified by the affidavit of the manufacturer, and showing that the liquors therein mentioned are all the intoxicating liquors sold by such manufacturer during the preceding quarter, shall be filed quarterly in the probate court of such county at the end of each quarter during the period of such permit. Such manufacturer shall sell the liquors so manufactured only in original packages. He shall sell such liquors to no one except druggists who at the time of such sale shall be duly authorized to sell intoxicating liquors as provided by law. Any rectification or adulteration of intoxicating liquors shall be considered manufacturing under this act. [Laws 1881, ch. 128, § 5, as amended by Laws 1887, ch. 165, § 6, March 8.]

(2526) How sales made; record. § 385. All sales made by such manufacturer shall be upon a written or printed appli-

cation, setting forth the name, occupation and residence of the applicant, the quantity and kind of liquors wanted, and for what purpose; and all such applications shall be verified by the affidavit of the applicant, made before some officer in the county having authority to administer oaths, that the statements in said application are true. Such manufacturer shall file all such applications in the probate court of the county wherein the applicant resides, within thirty days after receiving the same, where they shall be kept on file for two years from the date of such filing. Every person who shall willfully swear falsely in making any of the affidavits in this section and in section five of this act provided, shall be deemed guilty of perjury, and shall be prosecuted and punished therefor as in other cases arising under the laws of this state relating to perjury. Any rectification or adulteration of intoxicating liquors shall be considered manufacturing under this act. The record kept by such manufacturer shall be open to the inspection of the public at all reasonable times during business hours. [Laws 1881, ch. 128, § 6, May 1.]

(*State v. White*, 31 K. 342; *Miller v. Minney*, 31 K. 522.)

(2527) Penalty for selling without permit. § 386. Any person without taking out and having a permit to sell intoxicating liquors, as provided in this act, or any person not lawfully and in good faith engaged in the business of a druggist, who shall directly or indirectly sell or barter any spirituous, malt, vinous, fermented, or other intoxicating liquors, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days. [Laws 1881, ch. 128, § 7, as amended by Laws 1885, ch. 149, § 4, March 10.]

(*Junction City v. Keffe*, 40 K. 265; *State v. Shenkle*, 36 K. 43; *State v. Pfefferle*, 36 K. 90; *State v. Skinner*, 34 K. 256; *State v. Showers*, 34 K. 269; *State v. Schmidt*, 34 K. 399; *State v. Rohrer*, 34 K. 427; *City of Topeka v. Myers*, 34 K. 500; *State v. Guettler*, 34 K. 582; *State v. O'Connell*, 31 K. 388; *State v.*

Phillips, 33 K. 100; State v. Drake, 33 K. 151; State v. Manlove, 33 K. 483, State v. Brooks, 33 K. 708; State v. Carlyle, 33 K. 716; State v. Schwelter, 27 K. 499; State v. Nye, 32 K. 201; State v. Gleason, 32 K. 245; State v. Fleming, 32 K. 591; State v. Chandler, 31 K. 201; State v. White, 31 K. 342; State v. Cummins, 31 K. 376; Miller v. Minney, 31 K. 523; *In re* Donnelly, 30 K. 191, 424; State v. Kuhuke, 30 K. 462; State v. Nickerson, 30 K. 548; Jockers v. Borgman, 29 K. 109; State v. Shackles, 29 K. 341; State v. Hunt, 29 K. 762; State v. Kuhuke, 26 K. 405; Werner v. Edmiston, 24 K. 147; McCarty v. Gordon, 16 K. 35; State v. Muntz, 8 K. 384; State v. Pauly, 3 K. 388; Laurent v. State, 1 K. 318.)

(2528) Manufacture without permit; exceptions.

§ 387. Any person without taking out and having a permit to manufacture intoxicating liquors, as provided in this act, who shall manufacture, or aid or assist or abet in the manufacture of any of the liquors mentioned in section one of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall suffer the same punishment as provided in the last preceding section of this act for unlawfully selling such liquors; but nothing herein contained shall be construed to prohibit the making of wine or cider from grapes or apples grown and raised by the person making the same, for his own use, or the sale of wine for communion purposes. [Laws 1881, ch. 128, § 8, as amended by Laws 1885, ch. 149, § 5, March 10.]

(State v. Clark, 34 K. 289.)

(2529) Penalty for failure to keep record. § 388. Any druggist or pharmacist, or assistant pharmacist in his employ, who shall fail or neglect to make and keep a record as herein provided of any intoxicating liquors by him sold before the same are delivered, or shall refuse any person an examination of such records, or the taking of memoranda or copy therefrom at any time during business hours; or who shall sell, barter or give away any such liquors at any place not designated in his permit, or upon any affidavit other than those herein provided; or shall make any false affidavit as to any sales made by him or his employes; or shall fail to sign the certificate to the signature of any applicant for such liquor prior to the delivery thereof, or shall sign any false certificate to any such affidavit; or shall mutilate or remove any affidavits from the book to him issued

as aforesaid, or shall fail to return the same as hereinbefore provided; or shall sell any intoxicating liquor to any person whom he has reason to believe desires the same to use as a beverage; or sell liquor when he has reason to believe the liquor sold is not a remedy for the ailment described in the affidavit therefor; or shall sell, barter or give away any intoxicating liquor to any minor, any person under the influence of liquor, or who is in the habit of becoming intoxicated; or who shall allow such liquor, sold as a medicine or otherwise, to be drank on his premises or premises under his control; or in any other manner omit any act required of him herein, or violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days, and shall forfeit his permit issued under the provisions of this act, and his right to obtain a permit within five years next thereafter; and in all cases when forfeitures are provided under the provisions of this act, the court shall declare the same in rendering judgment in the action. [Laws 1881, ch. 128, § 9, as amended by Laws 1885, ch. 149, § 6, as amended by Laws 1887, ch. 165, § 3, March 8.]

(*In re* Gilson, 34 K. 641; *State v. Shackle*, 29 K. 341; *State v. Copp*, 34 K. 522; *State v. White*, 31 K. 342; *State v. Estabrook*, 29 K. 739; *State v. Hunt*, 29 K. 762; *Phillips v. Thralls*, 26 K. 780.)

(2530) Intoxicating liquors. § 389. All liquors mentioned in section one of this act, and all other liquors or mixtures thereof, by whatever name called, that will produce intoxication, shall be considered and held to be intoxicating liquors within the meaning of this act. [Laws 1881, ch. 128, § 10, May 1.]

(*City of Topeka v. Zufall*, 40 K. 47; *State v. Pfefferle*, 36 K. 90; *State v. Brooks*, 33 K. 708; *State v. Teissedre*, 30 K. 476; *State v. Jenkins*, 32 K. 477; *State v. Sterns*, 28 K. 154; *Intoxicating Liquor Cases*, 25 K. 751; *State v. Volmer*, 6 K. 371.)

(2531) Permit for one year and five. § 390. A permit to sell intoxicating liquor under this act shall continue in force for one year from the date thereof, unless sooner forfeited un-

der the provisions of this act; and a permit to manufacture and sell intoxicating liquor under this act shall continue in force for a period of five years from the date thereof, unless sooner forfeited under the provisions of this act: *Provided*, That the probate judge may require a renewal of the bond of said manufacturer at the end of any year by giving thirty days' notice to the principal in such bond, requiring him to renew such bond; and in default of his giving a new bond, with sureties, to the satisfaction of such probate judge, after having been so notified, he shall forfeit his permit to manufacture and sell intoxicating liquors under this act; such forfeiture shall be declared by such probate judge, and entered of record in said probate court. [Laws 1881, ch. 128, § 11, May 1.]

(2532) Duty of sheriffs, etc. § 391. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges, and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than one hundred nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. For a failure or neglect of official duty in the enforcement of this act, any of the city or county officers herein referred to may be removed by civil action. [Laws 1881, ch. 128, § 12, as amended by Laws 1885, ch. 149, § 7, as amended by Laws 1887, ch. 165, § 9, March 8.]

(*The State ex rel. v. The City of Topeka*, 31 K. 451; *State v. Leavenworth*, 36 K. 314; *State v. Manlove*, 33 K. 480; *State ex rel. v. Foster*, 32 K. 14; *State v. Gleason*, 32 K. 245, 251; *State v. Blackman*, 32 K. 615, 618; *Foster v. State*, 32 K. 765; *State ex rel. v. Wilson*, 30 K. 661, 669.)

(2533) Public nuisances. § 392. All places where in-

toxicating liquors are manufactured, sold, bartered, or given away in violation of any of the provisions of this act, or where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage, or where intoxicating liquors are kept for sale, barter, or delivery, in violation of this act, are hereby declared to be common nuisances, and upon the judgment of a court having jurisdiction finding such place to be a nuisance under this section, the sheriff, his deputy or undersheriff, or any constable of the proper county, or marshal of any city where the same is located, shall be directed to shut up and abate such places, by taking possession thereof, and by taking possession of all such intoxicating liquors found therein, together with all signs, screens, bars, bottles, glasses, and other property used in keeping and maintaining said nuisance, and such personal property so taken possession of shall be forthwith publicly destroyed by such officer, and the owner or keeper thereof shall upon conviction be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. The attorney general, county attorney, or any citizen of the county where such nuisance exists, or is kept, or is maintained, may maintain an action in the name of the state to abate and perpetually enjoin the same. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months, in the discretion of the court or judge thereof. In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of this section, the court rendering the same shall also render judgment for a reasonable attorney's fee in such action in favor of the plaintiff and against the defendants therein; which attorney's fee shall be taxed and collected as other costs

therein, and when collected paid to the attorney or attorneys of the plaintiff therein. [Laws 1881, ch.128, § 13, as amended by Laws 1885, ch.149, § 13, as amended by Laws 1887, ch.165, § 4, March 8.]

(Koester v. State, 36 K. 27; State v. Shenkle, 36 K. 43; State v. Hughes, 33 K. 23; State v. Krum, 32 K. 372; State v. Teissedre, 30 K. 476, 483; State v. Nickerson, 30 K. 545, 548; State *ex rel.* v. Crawford, 28 K. 726.)

(2534) Compensation for taking charge of person intoxicated. § 393. Every person who shall, by the sale, barter, or gift of intoxicating liquors, cause the intoxication of any other person or persons, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five dollars per day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, to be recovered by civil action in any court having jurisdiction. [Laws 1881, ch.128, § 14, May 1.]

(State v. Gutekunst, 24 K. 252.)

(2535) Civil damage liability. § 394. Every wife, child, parent, guardian, or employer, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of intoxication, habitual or otherwise, of any person, such wife, child, parent or guardian shall have a right of action, in his or her own name, against any person who shall by selling, bartering or giving intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained, as well as for exemplary damages; and a married woman shall have the right to bring suits, prosecute and control the same, and the amount recovered, the same as if unmarried; and all damages recovered by a minor under this act shall be paid either to such minor, or to his or her parents, guardian, or next friend, as the court shall direct; and all suits for damages under this act shall be by civil action in any of the courts of this state having jurisdiction thereof. [Laws 1881, ch.128, § 15, May 1.]

(Werner v. Edmiston, 24 K. 147; Durein v. Pontlous, 34 K. 353; Jockers v. Borgman, 29 K. 109.)

(2536) Keeping club rooms, etc. § 395. Every person who shall, directly or indirectly, keep or maintain, by himself or by associating and combining with others, or who shall in any manner (aid, assist or abet in keeping or maintaining any club room or other place in which any intoxicating liquor is received or kept for the purpose of use, gift, barter or sale as a beverage,) or for distribution or division among the members of any club or association by any means whatever, and every person who shall use, barter, sell, or give away, or assist or abet another in bartering, selling, or giving away any intoxicating liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [Laws 1881, ch. 128, § 16, May 1.]

(State v. Horacek, 41 K. 87; State v. Standish, 37 K. 643; State v. Nickerson, 30 K. 545.)

(2537) Shifts and devices. § 396. The giving away of intoxicating liquor, or any shifts or device to evade the provisions of this act, shall be deemed an unlawful selling within the provisions of this act. [Laws 1881, ch. 128, § 17, May 1.]

(State v. Standish, 37 K. 643; State *ex rel.* v. City of Leavenworth, 36 K. 314.)

(2538) Fines and costs a lien. § 397. All fines and costs assessed against any person or persons, for any violations of this act, shall be a lien upon the real estate of such person or persons until paid; and in case any person or persons shall let or lease any building or premises, and shall knowingly suffer the same to be used and occupied for the sale of intoxicating liquor contrary to the provisions of this act, the premises so leased and occupied shall be subject to a lien for, and may be sold to pay all fines and costs assessed against any such occupant for any violation of this act; and such liens may be enforced by civil action in any court having jurisdiction: *Provided*, That the person against whom such fines and costs are assessed shall be committed to the jail of the county until such fines and costs are paid. [Laws 1881, ch. 128, § 18, May 1.]

(*State v. Snyder*, 34 K. 425; *Snyder v. State*, 40 K. 543; *Pfefferle v. State*, 39 K. 128; *Cordes v. State*, 37 K. 43; *Seaton v. Hixon*, 35 K. 663; *Hardten v. State*, 32 K. 637, 639; *State v. Brooks*, 33 K. 703; *State v. Pfefferle*, 33 K. 713; *State v. Barrett*, 27 K. 213.)

(2539) County attorney to advise with probate judge.

§ 398. Whenever application is made to the probate judge for a permit to manufacture or to sell intoxicating liquors under the provisions of this act, he shall notify the county attorney thereof, and thereupon such county attorney shall appear and advise with said probate judge with reference to the issuance of said permit and the approval of the bond. No person who shall inform of offenses under this act, or make complaint therefor, shall be liable for the costs incurred in such prosecution, unless the court or jury trying the case shall find and determine that such prosecution was malicious and without probable cause. [Laws 1881, ch. 128, § 20, May 1.]

(*State v. Cook*, 30 K. 87.)

(2540) Complaint; witnesses. § 399. In prosecutions under this act, by indictment or otherwise, it shall not be necessary to state the kind of liquor manufactured or sold, and shall not be necessary to describe the place where sold, except in prosecutions for keeping and maintaining a common nuisance, or when a lien is sought to be established against the place where such liquors were illegally sold; and it shall not be necessary to state the name of the person to whom sold; and it shall not be necessary in the first instance for the state to prove that the party charged did not have a permit to sell intoxicating liquors for the excepted purposes; and in all cases the person or persons to whom such intoxicating liquors shall have been sold in violation of this act shall be competent witnesses to prove such fact, or any other fact tending thereto; and the members, shareholders or associates in any club or association mentioned in section sixteen of the act to which this act is amendatory shall be competent witnesses to prove any violation of the provisions of said section, or of this act, or any fact tending thereto. No person shall be excused from testifying touching any offense

committed by another against any of the provisions of this act by reason of his testimony tending to criminate himself (the witness), but the testimony given by such person shall in no case be used against him. [Laws 1881, ch. 128, § 21, as amended by Laws 1885, ch. 149, § 14, March 10.]

(State v. Shenkle, 36 K. 43; State v. Whisner, 35 K. 271; State v. Skinner, 34 K. 256; State v. Schmidt, 34 K. 399; State v. Rohrer, 34 K. 427; State v. Drake, 33 K. 151; State v. Brooks, 33 K. 708; State v. Wilgus, 32 K. 126; State v. Gleason, 32 K. 245; State v. Forner, 32 K. 281, 284; State v. Schweiter, 27 K. 499; State v. Blackman, 23 K. 615; State v. Crimmins, 31 K. 376; State v. O'Connell, 31 K. 383; State v. Cook, 30 K. 82; State v. Teissedre, 30 K. 476; State v. Kuhuke, 30 K. 462; State v. Sterns, 28 K. 154.)

(2541) Grand jury. § 400. It shall be and is hereby made the duty of all courts of this state, before whom a grand jury is summoned, to charge such grand jury especially concerning this act, and direct said jury to inquire particularly of all violation of any of its provisions. [Laws 1881, ch. 128, § 22, May 1.]

(2542) Repeal. § 401. Chapter thirty-five of the General Statutes of 1868, and all acts and parts of acts in conflict with this act, are hereby repealed. [Laws 1881, ch. 128, § 23, May 1.]

Take effect. § 402. This act shall be immediately published in the official state paper, and take effect and be in force from and after the first day of May, A. D. 1881. [Laws 1881, ch. 128, § 24, May 1.]

(2543) Duty of county attorney; process; witnesses; seize and destroy liquors. § 403. If the county attorney of any county shall be notified by an officer or other person of any violation of any of the provisions of this act, it shall be his duty forthwith to diligently inquire into the facts of such violation, and for such purpose he is hereby authorized and required to issue his subpoena for such person or persons as he may have reason to believe have any information or knowledge of such violation, to appear before him at a time and place designated in such subpoena, then and there to testify concerning any violations of this act; said subpoena shall be directed to the sheriff or any constable of the county, and shall be served and returned to such county attorney in the same manner as subpoenas are

served and returned in criminal cases. Each witness shall be sworn by the county attorney to testify the truth, the whole truth, and nothing but the truth, and true answer make to all questions which may be propounded to him by such county attorney, touching any violations of the provisions of this act, or the act to which this is amendatory. The testimony of every such witness shall be reduced to writing and signed by such witness, as in the taking of depositions in civil cases. For all purposes in this section the county attorney is hereby authorized and empowered to administer oaths or affirmations to all witnesses, and shall have power to punish any witness for contempt for or on account of any disobedience of a subpoena, a refusal to be sworn or answer as a witness, or to sign his testimony, and may compel the attendance of witnesses by attachment in the same manner and with like effect as provided in the code of civil procedure. If the testimony so taken shall disclose the fact that an offense has been committed against any of the provisions of this act, the county attorney shall forthwith file such statement, together with his complaint or information against the person having committed the offense, in some court of competent jurisdiction; and such statement or testimony, together with the information or complaint of such county attorney, when verified by him on information and belief, shall have the same effect as if such information or complaint had been verified positively. And thereupon a warrant shall issue for the arrest of the person or persons named in such information, as in other criminal cases, and in addition thereto shall command the officer to whom it may be directed to seize and take into his custody any and all intoxicating liquors, vessels and bottles containing the same, which he may find in such persons' possession, and safely keep the same, subject to the order of the court: *Provided*, The sworn statement of the witness or witnesses, as hereinbefore provided, and the complaint or information filed by the county attorney, shall particularly describe the property to be seized, and the place where kept; and if upon the trial of such person he shall be convicted of violating any of the provi-

sions of this act, the court shall order as a part of his judgment, in addition to the penalty herein provided, that the officer having the custody thereof shall publicly destroy all such property used and employed for such illegal purpose: *Provided*, The court shall find and adjudge the property so seized was being used and employed by the defendant for such illegal purposes. [Laws 1885, ch. 149, § 8, March 10.]

(State v. Whisner, 35 K. 271; State v. Clark, 34 K. 289; State v. Brooks, 33 K. 708.)

(2544) Unknown persons; complaint, warrants, seizure. § 404. If the statement of any witness so taken before the county attorney, as in the last preceding section provided, shall disclose the fact that intoxicating liquors are being kept for unlawful sale or purpose, or are being sold by an unknown person or persons, particularly describing such unknown person or persons, contrary to the provisions of this act, at any place, particularly describing the place to be searched and the property to be seized, as hereinafter provided, within such county, it shall be the duty of such county attorney to forthwith file his complaint or information; together with such statement, with some court of competent jurisdiction, against such place and the unknown keepers thereof, which information or complaint, when verified by such county attorney upon information and belief, together with such statement as aforesaid, shall have the same effect as if such information or complaint had been sworn to positively; and thereupon a warrant shall issue, directed to the proper officer, commanding him to search the premises described in the information or complaint, and to seize all intoxicating liquors and all vessels or bottles containing the same, and arrest the keeper or keepers thereof; and said person or persons when arraigned before the court shall plead to his or their real name or names, and shall be tried upon said complaint or information, and if found guilty shall be fined not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days; and the court before whom such conviction may be had

shall also order all the property seized by the officer as aforesaid to be publicly destroyed: *Provided*, Said court shall also find and adjudge such property was being used by the defendant at the time of such search and seizure for the purpose of unlawfully selling or bartering intoxicating liquors. [Laws 1885, ch. 149, § 9, March 10.]

(2545) Fees of officers and witnesses. § 405. Officers shall receive the same fees and mileage for serving subpoenas issued by county attorneys under the provisions of this act as provided in criminal cases, and witnesses shall receive the same fees for attendance as provided for witnesses in cases before the justices of the peace. Such fees shall be certified to the board of county commissioners by the county attorney, and paid by the county as witness fees for attendance before a grand jury. All witnesses shall attend upon the county attorney in pursuance of his subpoena, without the payment of any fees in advance. The county attorney shall be allowed a fee of twenty-five dollars upon each count upon which the defendant shall be convicted, and the same shall be taxed as costs in the case, but the county shall in no case be liable therefor. Upon all sums collected by the county attorney on forfeited recognizances, under the provisions of this act, he shall receive 20 per cent. thereof. If any prosecution begun by the county attorney, or attorney general, or by a citizen with the written consent and approval of the county attorney or attorney general, under the provisions of this act, shall fail, the costs of such prosecution, unless otherwise specified herein, shall be paid by the county in which such prosecution or action was begun. [Laws 1885, ch. 149, § 10, March 10.]

(State v. Schmidt, 34 K. 399.)

(2546) Duty of county attorney. § 406. It shall be the duty of the county attorney to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties, and to bring suit upon all bonds or recognizances forfeited, immediately after the happening of such for-

feiture, to recover the penalty, and to pay all money so collected, less his fee for collecting the same, as herein provided, into the school fund of his county. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than ninety days; and said conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office in addition to the fine imposed as herein provided. And whenever the county attorney shall be unable or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, informations, petitions and papers as the county attorney is authorized to sign, verify or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fees that the county attorney would be entitled to for like services, to be taxed and collected in the same manner, except that in all cases where there shall be a conviction, and the attorney's fees as provided for in this act shall not be paid by the defendant within one month after his release from jail, the county where such conviction is had shall then become liable to the attorney general, or his assistant prosecuting such case, for a fee of twenty-five dollars upon each count upon which the defendant shall have been convicted. [Laws 1885, ch. 149, § 11, as amended by Laws 1887, ch. 165, § 5, March 8.]

(*In re Gilson*, 34 K. 641; *State ex rel. v. Foster*, 32 K. 14.)

(2547) County clerk or probate judge. § 407. Every county clerk or probate judge who shall neglect or refuse to per-

form any duty required of him under this act, the punishment of which is not hereinbefore provided by this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, and in addition thereto shall forfeit his right to longer hold his office; and the court before whom such conviction is had shall order and adjudge such forfeiture. [Laws 1887, ch. 165, § 7, March 8.]

(2548) Fees. § 408. For services performed under this act the probate judge and county clerk shall receive no fees except such as are herein provided for. [Laws 1887, ch. 165, § 8, March 8.]

(2549) Repeal. § 409. That section six of chapter one hundred and twenty-eight of the Session Laws of eighteen hundred and eighty-one, and sections two, four, nine, twelve, and thirteen of chapter one hundred and twenty-eight of the Session Laws of eighteen hundred and eighty-one, as amended by sections one, three, six, seven and thirteen of chapter one hundred and forty-nine of the Session Laws of eighteen hundred and eighty-five, and section eleven of chapter one hundred and forty-nine of the Session Laws of eighteen hundred and eighty-five, be and the same are hereby repealed. [Laws 1887, ch. 165, § 10, March 8.]

(2550) Unauthorized sale. § 410. Any person who shall take or receive any order for intoxicating liquors from any person in this state, other than a person authorized to sell the same as in this act provided, or any person who shall directly or indirectly contract for the sale of intoxicating liquors with any person in this state, other than a person authorized to sell the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished therefor as provided in this act for selling intoxicating liquors. [Laws 1885, ch. 149, § 12, March 10.]

(2551) Notice not to sell to certain person. § 411. Whenever the father, mother, brother, sister, wife, husband, or

guardian, or any relative of any person, shall notify any druggist that such person, naming him, uses intoxicating liquors as a beverage, and shall forbid said druggist from selling, bartering, or giving to such person any intoxicating liquors, it shall be unlawful for any such druggist, after such notice, to let such person have any intoxicating liquors upon any terms or conditions whatever. Any druggist who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and shall be imprisoned in the county jail for a period of not less than thirty days nor more than six months. [Laws 1885, ch. 149, § 15, March 10.]

(2552) Minors. § 412. The treating or giving of any intoxicating liquors to any minor by any person other than the father, mother, or guardian of such minor, or a physician for medical purposes, shall be unlawful; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished therefor as provided in the last preceding section of this act for unlawfully selling intoxicating liquors. [Laws 1885, ch. 149, § 16, March 10.]

(2553) Common carriers. § 413. Any officer, agent, or employé of a railroad company, express company, or other common carrier, who shall knowingly carry or deliver any intoxicating liquor to or for any person, to be sold in violation of this act, or the act to which this is amendatory and supplemental, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty nor more than sixty days. [Laws 1885, ch. 149, § 17, March 10.]

(2554) Attorney to assist county attorney. § 414. Any citizen may employ an attorney to assist the county attorney to perform his duties under this act, and such attorney shall be

recognized by the county attorney and the court as associate counsel in the proceeding; and no prosecution shall be dismissed over the objection of such associate counsel until the reasons of the county attorney for such dismissal, together with the objections thereto of said associate counsel, shall have been filed in writing, argued by counsel, and fully considered by the court. [Laws 1885, ch. 149, § 18, March 10.]

(2555) Liquor permit. . . . If any probate judge shall knowingly issue a permit to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of a wholesale dealer in drugs and chemicals, or photographers' supplies, as proprietor or manager thereof, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$500 nor more than \$1,000; and if any person shall sign the petition, as provided herein, of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a wholesale dealer in drugs and chemicals, or in photographers' supplies, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than \$50 nor more than \$100. [Laws 1891, ch. 2, part § 2.]

(2555a) Fees. . . . The probate judge shall receive no fees under this act; and every person who shall make a false affidavit under this act, for the purpose of evading or avoiding its provisions, or the provisions of chapter 165 of the laws of 1887, shall be deemed guilty of perjury, and shall be punished by confinement and hard labor for a period not exceeding two years, or by confinement in the county jail not exceeding six months. And any person who shall make a false certificate under this act for the purpose of evading or avoiding its provisions, or the provisions of chapter 165 of the laws of 1887, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than four hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety

days. Any person who shall subscribe any name or character other than his own name to a certificate under the provisions of this act, or cause certificates to be printed in the name of any wholesale dealer herein described without authority, shall be deemed guilty of forgery in the fourth degree, and be punished therefor as now provided by law for forgery in such degree. Any person who shall sell or furnish any alcohol as designated by this act, diluted with water or otherwise, as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than four hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. [Laws 1891, ch. 2, part § 3.]

(2555b) Liquor to soldiers. It shall be unlawful for any person to barter, sell or give away to any person who is a member or inmate of any national home for disabled volunteer soldiers, or any state military home for disabled volunteer soldiers, within the state of Kansas, any spirituous, malt or vinous liquor, or any liquid substance or drug that will produce intoxication or stupefaction. [Laws 1891, ch. 131, § 1.]

(2555c) Punishment. Any person who shall violate any of the provisions of section one of this act shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than \$500 or imprisonment in the state penitentiary for not less than one year, or by both such fine and imprisonment. [Laws 1891, ch. 131, § 2.]

AN ACT to prohibit the use of intoxicating liquors at the polls, and providing a punishment therefor.

[Took effect March 10, 1887.]

(2556) Liquors at polls. § 416. That it shall be unlawful at any general or special election in this state for any person to have or keep any whisky, beer, or other intoxicating liquors in his possession or under his control, within one-half mile of any voting- or polling-place; or to sell, barter, or give away, by "treating" or otherwise, any of such intoxicating liquors to any

voter at such general or special election within the vicinity of such polling- or voting-place. And any person so offending shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty dollars, and imprisoned for a term of not less than ten days: *Provided*, That this act shall not apply to any person holding a permit to sell such liquors. [Laws 1887, ch. 164, § 1, March 10.]

This act shall take effect and be in force from and after its publication in the official state paper. [Laws 1887, ch. 164, § 2, March 10.]

Approved March 4, 1887. Published March 10, 1887.

(2556a) Every person who manufactures for sale or exposes for sale as cider vinegar, any vinegar not the product of pure apple juice known as apple cider, or vinegar not made exclusively of apple cider, or vinegar into which any deleterious substances, drugs, or acids have been introduced, shall for each offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars. [Laws 1891, ch. 1, § 1.]

(2556b) Every person who manufactures for sale, sells or offers for sale, any vinegar which contains any preparation of lead, copper, sulphuric acid, or other ingredient injurious to health, shall for each such offense be punished by fine of not less than fifty nor more than one hundred dollars. [Laws 1891, ch. 1, § 2.]

(2556c) Compounds. The provisions of sections one and two shall apply to all preparations of vegetables, fruits and other products, in which vinegar is one of the principal ingredients. [Laws 1891, ch. 1, § 3.]

(2556d) Branding. Every person making or manufacturing cider vinegar shall brand on one head of the cask, barrel or keg containing such cider vinegar the name and residence of the manufacturer, and the words *cider vinegar*; and any person or manufacturer who brands any cask, barrel, keg or other vessel with the name of *cider vinegar* which contains any liquid other than pure cider vinegar, shall upon conviction be fined

not less than fifty nor more than one hundred dollars for each barrel, cask, keg or other vessel so branded. [Laws 1891, ch. 1, § 4.]

(2556e) Banks. Every officer, agent or clerk of any bank under this act, who willfully and knowingly subscribes to or makes any false reports or any false statements or entries in the books of such bank, or knowingly subscribes or exhibits any false writing or paper, with the intent to deceive any person as to the condition of such bank, shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment. [Laws 1891, ch. 43, § 1.]

(2556f) Deposit. No bank shall accept or receive on deposit, with or without interest, any money, bank bills or notes, or United States treasury notes, gold or silver certificates, or currency, or other notes, bills or drafts circulating as money or currency, when such bank is insolvent; and any officer, director, cashier, manager, member, party or managing party of any bank, who shall knowingly violate the provisions of this section, or be accessory to, or permit, or connive at the receiving or accepting on deposit of any such deposit, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the penitentiary not exceeding five years, or by both such fine and imprisonment. [Laws 1891, ch. 43, § 16.]

(2556g) Deposits. It shall be unlawful for any individual, firm or corporation to transact a banking business, or to receive deposits, for a longer period than six months immediately after the passage and approval of this act, without having first transmitted to the bank commissioner a verified statement of the resources and liabilities of such individual, firm, or corporation; said statement shall be made in accordance with sections 5 and 18 of this act. The bank commissioner shall thereupon have power to examine into the condition and affairs of such bank, and shall within thirty days from the receipt of such statement

make such examination, and if such bank has in all respects complied with the provisions of law applicable thereto, said commissioner shall issue to such individual, firm, or corporation, under his hand and seal, a certificate showing the amount of capital paid in, and that the same is authorized to transact a general banking business, as provided by this act. Any persons violating the provisions of this section, either individually or as an interested party in any association or corporation, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the sum not less than three hundred dollars or more than one thousand dollars, or by imprisonment in the county jail not less than thirty days or more than one year, or by both such fine and imprisonment. [Laws 1891, ch. 43, § 17.]

(2556h) Officer. Every banker, officer, employé or agent of any bank who shall neglect to perform any duty required by this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment. [Law 1891, ch. 43, § 34.]

(2556i) Commissioner. Any commissioner or deputy commissioner who shall neglect to perform any duty provided for by this act, or who shall make any false statement concerning any bank, or who shall be guilty of any misconduct or corruption in office, shall upon conviction thereof be deemed guilty of a misdemeanor, and punished in the manner provided for in the preceding section, and in addition thereto shall be removed from office by the governor. [Laws 1891, ch. 43, § 36.]

(2556j) Labor. That any officer of the state of Kansas, or of any county, city, township or municipality of said state, or any person acting under or for such officer, or any contractor with the state of Kansas, or any county, city, township or other municipality thereof, or other person violating any of the provisions of this act, shall for each offense be punished by a fine of not less than \$50 nor more than \$1,000, or by imprisonment

not more than six months, or both fine and imprisonment, in the discretion of the court. [Laws 1891, ch. 114, § 3.]

(2556k) Warehouses — Inspection. Any person who shall transact the business of a public warehouseman without first procuring a license and filing said bond as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he be permitted to deliver property previously stored in such a warehouse), shall on conviction thereof be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is carried on in such manner; and the board of trade having such warehouse under its supervision may refuse to renew any license or grant a new one to any person whose license has been revoked, within one year from the time the same was revoked. [Laws 1891, ch. 248, § 4.]

(2556l) Officer. Any person who shall assume to act as inspector or as a weigher of grain, who has not first been appointed and qualified in accordance with the provisions of this act, shall be held to be an impostor, and deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than two hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or by both such fine and imprisonment, for each and every attempt to inspect or weigh grain; all fines so collected to be paid into the state treasury for the use of the state school fund. [Laws 1891, ch. 248, § 28.]

(2556m) Inspector. Any duly-authorized inspector or deputy inspector of grain who shall be guilty of any neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or shall accept any money or other consideration directly or indirectly for any neglect of duty or any improper performance of his duty as such inspector of grain, or any person who shall improperly influence any inspector of grain in the performance of his duty as such inspector, shall be deemed

guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail not less than thirty days nor more than one year, or both such fine and imprisonment, in the discretion of the court. [Laws 1891, ch. 248, § 28.]

(2556n) **Attorney General.** The attorney general of the state of Kansas shall be *ex officio* attorney for the state inspector, and shall give him such counsel and advice as he may from time to time require, and said attorney general shall institute and prosecute all suits which said state inspector may deem expedient and proper to institute; and he shall render to said state inspector all counsel, advice and assistance necessary to carry out the provisions of this act according to the true meaning and intent thereof. In all criminal prosecutions against a warehouseman for a violation of any of the provisions of this act, it shall be the duty of the county attorney of the county in which such prosecution is brought to prosecute the same to a final issue. [Laws 1891, ch. 248, § 40.]

ARTICLE 11.—GENERAL PROVISIONS.

(2557) **Attempting to commit offenses.** § 417. Every person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

First, If the offense attempted to be committed be such as is punishable by the death of the offender, the person convicted of such attempt shall be punished by confinement and hard labor not exceeding ten years.

Second, If the offense so attempted be punishable by confinement and hard labor, the person convicted of such attempt shall

be punished by confinement and hard labor for a term not exceeding one-half of the longest time of imprisonment prescribed upon a conviction for the offense so attempted.

Third, If the offense so attempted be punishable either by confinement and hard labor, or in a county jail, the person so convicted of such attempt shall be punished by imprisonment in the county jail not exceeding one year nor less than two months.

Fourth, If the offense so attempted be punishable by imprisonment in the county jail, and fine, the offender convicted of such attempt may be punished by both imprisonment and fine, or either, not exceeding one-half the longest time of imprisonment and one-half of the greatest fine which may be imposed upon a conviction for the offense so attempted.

Fifth, If the offense attempted be punishable by fine only, the offender convicted of such attempt shall be liable to a fine not exceeding one half of the greatest fine which may be imposed upon a conviction of the offense so attempted. [G. S. 1868, ch. 31, § 283, Oct. 31.]

(*State v. Decker*, 36 K. 717; *State v. Hart*, 33 K. 218; *State v. O'Kane*, 23 K. 244.)

(2558) Not be convicted, when. § 418. No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offense, when it shall appear that the crime intended or the offense attempted was perpetrated by such person at the time of such assault, or in pursuance of such attempt. [G. S. 1868, ch. 31, § 284, Oct. 31.]

(2559) Bringing stolen articles into state. § 419. Every person who shall steal or obtain by robbery the property of another in any other state, territory, or country, and shall bring the same into this state, may be convicted and punished for larceny in the same manner as if such property had been feloniously stolen or taken within this state; and in any such cases the larceny may be charged to have been committed and may be indicted and punished in any county into or through

which such stolen property shall have been brought. [G. S. 1868, ch. 31, § 285, Oct. 31.]

(McFarland v. State, 4 K. 68.)

(2560) Former conviction or acquittal. § 420. Every person prosecuted under the last section may plead a former conviction or acquittal for the same offense in another state, territory, or country; and if such plea be admitted or established, it shall be a bar to any other or further proceedings against such person. [G. S. 1868, ch. 31, § 286, Oct. 31.]

(2561) Principals in the second degree and accessories before the fact. § 421. Every person who shall be a principal in the second degree in the commission of any felony, or who shall be an accessory to any murder or other felony, before the fact, shall upon conviction be adjudged guilty of the offense in the same degree and be punished in the same manner as herein prescribed with respect to the principal in the first degree. [G. S. 1868, ch. 31, § 287, Oct. 31.]

(State v. Mosley, 31 K. 355, 356.)

(2562) Accessories after the fact. § 422. Every person who shall be convicted of having concealed any offender after the commission of any felony, or of having given to such offender any other aid, knowing that he has committed a felony, with the intent and in order that he may escape or avoid arrest, trial, conviction, or punishment, and no other, shall be deemed an accessory after the fact, and upon conviction shall be punished by confinement and hard labor not exceeding five years, or in the county jail not exceeding one year nor less than six months, or by fine not less than four hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in a county jail not less than three months. [G. S. 1868, ch. 31, § 288, Oct. 31.]

(State v. Fry, 40 K. 311.)

(2563) Committing second offense. § 423. If any person convicted of any offense punishable by confinement and hard labor, or of any attempt to commit an offense which if

perpetrated would be punishable by confinement and hard labor, shall be discharged either upon pardon or upon compliance with the sentence, and shall subsequently be convicted of any offense committed after such pardon or discharge, he shall be punished as follows :

First, If such subsequent offense be such that upon a first conviction the offender would be punishable by confinement and hard labor for life, or for a term which under this act might extend to confinement for life, then such person shall be punished by confinement and hard labor for life.

Second, If such subsequent offense be such that upon a first conviction the offender would be punishable by imprisonment for a limited term of years, then such person shall be punished by confinement and hard labor for the longest term prescribed upon a conviction for such first offense.

Third, If such subsequent conviction be for an attempt to commit an offense which if perpetrated would be punishable by confinement and hard labor, the person convicted of such subsequent offense shall be punished by confinement and hard labor for a term not exceeding five years. [G. S. 1868, ch. 31, § 289, Oct. 31.]

(2564) Convicts in other states. § 424. Every person who shall have been convicted in any of the United States, or in any district or territory thereof, or in a foreign country, of an offense which if committed in this state would be punishable by the laws of this state by confinement and hard labor, shall upon conviction for any subsequent offense within this state be subject to the punishment herein prescribed upon subsequent convictions, in the same manner and to the same extent as if such first conviction had taken place in a court of this state. [G. S. 1868, ch. 31, § 290, Oct. 31.]

(2565) Imprisonment for lifetime, when. § 425. Whenever any offender is declared by law punishable, upon conviction, by confinement and hard labor for a term not less than any specified number of years, and no limit to the duration of such im-

prisonment or confinement is declared, the offender may be sentenced to imprisonment during his natural life, or for any number of years not less than such as are prescribed; but no person shall in any case be sentenced to confinement and hard labor for any term less than one year. [G. S. 1868, ch. 31, § 291, Oct. 31.]

(State v. Pierce, 23 K. 153.)

(2566) No fine to be imposed. § 426. Whenever any offender is declared by law punishable, upon conviction, by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, it shall not be construed to authorize the imposition of a fine where the offender is sentenced to confinement and hard labor. [G. S. 1868, ch. 31, § 292, Oct. 31.]

(2567) Punishment limited. § 427. Whenever any offender is declared by law punishable, upon conviction, by confinement and hard labor, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, and no limit is fixed by law to the duration of imprisonment in the jail or to the fine, in such cases the convict shall in no instance be sentenced to a longer term of imprisonment in a county jail than twelve months, nor shall the fine in any such case exceed one thousand dollars. [G. S. 1868, ch. 31, § 293, Oct. 31.]

(2568) Misdemeanor; how punished. § 428. Whenever any offense is declared by statute to be a misdemeanor, and no punishment is prescribed by that or any other statute, the offender shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [G. S. 1868, ch. 31, § 294, Oct. 31.]

(2569) Fine may be imposed. § 429. Upon conviction for any offense punishable by imprisonment in a county jail, in relation to which no fine is by law prescribed, a fine may be imposed upon the offender not exceeding one hundred dollars. [G. S. 1868, ch. 31, § 295, Oct. 31.]

(2570) Acquittal a bar. § 430. When a defendant shall be acquitted or convicted upon any indictment for any offense consisting of different degrees as specified in this act, he shall not thereafter be tried or convicted of a different degree of the same offense, nor for an attempt to commit the offense charged in the indictment, or any degree thereof, provided he could have been legally convicted of such degree of offense, or attempt to commit the same, under the first indictment. [G. S. 1868, ch. 31, § 296, Oct. 31.]

(State v. Hart, 33 K. 218; State v. Colgate, 31 K. 511; City of Olathe v. Adams, 15 K. 391; State v. McCord, 8 K. 232.)

(2571) Tried again. § 431. When a defendant shall have been acquitted of a criminal charge, upon trial, on the ground of variance between the indictment and the proof, or upon any exceptions to the form or substance of the indictment, or where he shall be convicted but the judgment shall for any cause be arrested, he may be tried and convicted on a subsequent indictment for the same offense or any degree thereof. [G. S. 1868, ch. 31, § 297, Oct. 31.]

(State v. Colgate, 31 K. 515.)

(2572) Acquittal pleaded. § 432. When a defendant shall have been acquitted upon a trial, on the merits and facts, and not on any ground stated in the last section, he may plead such acquittal in bar to any subsequent accusation for the same offense, notwithstanding any defect in form or substance in the indictment upon which such acquittal was had. [G. S. 1868, ch. 31, § 298, Oct. 31.]

(State v. Colgate, 31 K. 511.)

(2573) Under sixteen years of age. § 433. Whenever any person under the age of sixteen years shall be convicted of any felony, he shall be sentenced to imprisonment in a county jail not exceeding one year, instead of confinement and hard labor as prescribed by the preceding provisions of this act. [G. S. 1868, ch. 31, § 299, Oct. 31.]

(2574) Civil rights suspended. § 434. A sentence of confinement and hard labor for a term less than life suspends

all civil rights of the person so sentenced during the term thereof, and forfeits all public offices and trusts, authority and power; and a person sentenced to such confinement for life shall thereafter be deemed civilly dead. [G. S. 1868, ch. 31, § 300, Oct. 31.]

(2575) Convict under protection of the law. § 435.

The person of a convict sentenced to confinement and hard labor is under the protection of the law, and any injury to his person not authorized by law shall be punishable in the same manner as if he was not sentenced or convicted. [G. S. 1868, ch. 31, § 301, Oct. 31.]

(2576) Corruption of blood, or forfeiture. § 436. No conviction of any person for any offense whatever shall work corruption of blood, or any forfeiture of any estate or any right or interest therein; and all forfeitures in cases of suicide or death by casualty, or where any person shall flee from justice, are abolished. [G. S. 1868, ch. 31, § 302, Oct. 31.]

(2577) Disqualified from holding office, etc. § 437. Every person who shall be convicted of any felony punishable under any of the provisions of this act shall be thereafter disqualified from holding any office of honor, profit, or trust, or voting at any election within this state. [G. S. 1868, ch. 31, § 303, Oct. 31.]

(2578) Disabilities removed. § 438. Whenever a person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this act, disqualified to be sworn as a juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned. [G. S. 1868, ch. 31, § 304, Oct. 31.]

(2579) Civil rights restored. § 439. If such convict shall have committed the offense while within the age of sixteen years, and such conviction shall be for a first offense, all civil disabilities incurred shall be removed and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced. [G. S. 1868, ch. 31, § 305, Oct. 31.]

(2580) Civil action not merged. § 440. In no case shall the right of action of any party injured by the commission of a felony be deemed or adjudged to be merged in such felony, but he may recover the amount of damages sustained thereby, in an action to be brought before any court or tribunal of competent jurisdiction. [G. S. 1868, ch. 31, § 306, Oct. 31.]

(2581) Fines, penalties, etc. § 441. Whenever any fine, penalty or forfeiture is or may be inflicted by any statute of this state for any offense, the same may be recovered by indictment, (except as in the next section is provided,) notwithstanding another or different remedy for the recovery of the same may be specified in the act imposing the fine, penalty, or forfeiture: *Provided*, That in all cases the fine, penalty or forfeiture shall go to the state, county, corporation, person or persons to whom the act imposing the same declares it shall accrue. [G. S. 1868, ch. 31, § 307, Oct. 31.]

(A. T. & S. F. Rld. Co. v. State, 22 K. 1.)

(2582) Jurisdiction of district courts. § 442. The district courts shall have exclusive original jurisdiction in all cases of felony, and of all offenses not declared expressly to be cognizable before some other court or officer. [G. S. 1868, ch. 31, § 308, Oct. 31.]

(State v. Finley, 6 K. 366.)

(2583) "Infamous crime." § 443. Wherever the term "infamous crime" is used in this or any other statute, it shall be construed as meaning every offense for which the offender on conviction or sentence is declared to be disqualified, or rendered incompetent to be a juror, or to vote at any election, or to hold any office of honor, profit or trust within this state. [G. S. 1868, ch. 31, § 309, Oct. 31.]

(2584) "Crime," "offense," and "criminal offense." § 444. The terms "crime," "offense," and "criminal offense," when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted. [G. S. 1868, ch. 31, § 310, Oct. 31.]

(A. T. & S. F. Rld. Co. v. State, 22 K. 14.)

(2585) **“Personal property.”** § 445. The term “personal property” as used in this act shall be construed to mean goods, chattels, effects, evidences of right in action, and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or diminished. [G. S. 1868, ch. 31, § 311, Oct. 31.]

(2586) **“Real property” or “real estate.”** § 446. The terms “real property” or “real estate” as used in this act include every estate, interest and right in lands, tenements, and hereditaments. [G. S. 1868, ch. 31, § 312, Oct. 31.]

(2587) **“Property.”** § 447. The term “property” as used in this act includes “personal property,” and “real property” or “real estate,” as defined in the last two sections. [G. S. 1868, ch. 31, § 313, Oct. 31.]

(2588) **“Person.”** § 448. When the term “person” is used in this act to designate the party whose property may be the subject of any offense, such term shall be construed to include the United States, this state, or any other territorial government, state, or country, or county, or any other municipal, public or private corporation which may lawfully own any property within this state, as well as individuals. [G. S. 1868, ch. 31, § 314, Oct. 31.]

(State v. Bancroft, 22 K. 170; State v. Herold, 9 K. 194.)

(2589) **Sufficient intent.** § 449. Where any intent to injure, defraud or cheat is required by law to be shown in order to constitute an offense, it shall be sufficient if such intent be to injure, defraud or cheat the United States, this state, or any state or country, or the government, or any public office thereof, or any county, city, town, or village, or any corporation, body politic, or private individual. [G. S. 1868, ch. 31, § 315, Oct. 31.]

CHAPTER 34.—DRAINAGE.

AN ACT providing for the drainage of swamp, bottom, or other low lands.

[Took effect March 26, 1879.]

(2645) Obstructing ditch misdemeanor. § 22. Any person who shall willfully or maliciously fill up or obstruct any such ditch, drain, or watercourse, shall be guilty of a misdemeanor, and upon conviction before any justice of the peace or other court having jurisdiction, shall be fined in a sum not to exceed twenty-five dollars, and shall moreover be liable for all damages that may accrue to any person or persons by such act or acts. [Laws 1886, ch. 161, § 6, Feb. 24.]

CHAPTER 36.—ELECTIONS.

AN ACT to regulate elections.

[Took effect October 31, 1868.]

(2664) Misdemeanor. § 7b. Any person printing or causing to be printed or pasted ballots with a designated heading, containing a name or names not found on the regular ballot having such heading, or which omits any name found on such regular ticket, or any person knowingly peddling or distributing or causing to be distributed any such ballot, with the intent to have such ballot voted at any such general or special election, shall be deemed guilty of a misdemeanor, and shall on conviction thereof for each offense be fined in any sum not less than twenty-five nor more than two hundred dollars, or be imprisoned in the county jail not exceeding sixty days. [Laws 1887, ch. 154, § 2, March 11.]

(2665) Furnishes ticket. § 7c. Whoever furnishes an elector who cannot read with a ticket, informing him that it contains a name different from those written or printed thereon, with the intent to induce him to vote contrary to his inclination,

or fraudulently or deceitfully changes the ballot of any elector, by which such elector is prevented from voting for such candidate as he intended, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding ninety days, or by fine not exceeding three hundred dollars. [Laws 1887, ch. 154, § 3, March 11.]

(2665a.) **Elections, primary.** That if any candidate for office in any election mentioned in this act, or any other person, shall directly or indirectly offer, promise, procure, confer, or give any money, property, thing in action, preferment, or other consideration or valuable thing, any money, note or check, draft, credit, or property, to be used by way of fee, reward, gift, or gratuity, for giving or refusing to give any vote in any election of any public officer, state, county, or municipal, whatever, or of any member of the congress of the United States, or electors for president and any vice-president of the United States, such person either offering, asking or receiving the same shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof be punished by fine or imprisonment, or both, at the discretion of the court, said fine not to exceed one hundred dollars nor such imprisonment six months: *And further*, Such person shall, on such conviction, and as a part of the judgment of the court, be deprived of the right of suffrage, and such candidate for office be disqualified to hold any office to which he was elected at such election: *And further*, If any person shall mark, in any way, for the purpose of corruptly identifying any ticket that shall be afterward voted at such election, with intent to escape, evade or violate the provisions of this act, then any such person shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof be punished by fine or imprisonment, or both, at the discretion of the court, said fine not to exceed one hundred dollars, and such imprisonment six months. [Laws 1891, ch. 115, § 7.]

(2665b) **Evidence.** That any person may be compelled to testify in any judicial proceeding against any person or persons

charged with bribery, corrupt solicitation, or the offenses hereby prohibited, and shall not be permitted to withhold his testimony on the ground that he may criminate himself or subject himself to punishment, but such testimony shall not be afterwards used against him in any judicial proceedings, except for perjury in such testimony. [Laws 1891, ch. 115, § 8.]

ARTICLE 5.—MISCELLANEOUS.

(2723) Free from arrest. § 63. All judges, clerks and voters shall be free from arrest, except for felony and breach of the peace, in going to, attending on and returning from elections. [G. S. 1868, ch. 36, § 63, Oct. 31.]

Sec. 63 of the election laws limits to some extent the operation of § 55 of the code. (*McAnarney v. Caughenaur*, 34 K. 623.)

(2725) Neglect of duty, corrupt conduct, etc. § 65. If any officer, messenger or other person on whom any duty is enjoined by law relative to general or special elections under this act shall be guilty of any willful neglect of such duty, or of any corrupt conduct in the execution of the same, he shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars and by imprisonment not exceeding one year; and if any officer shall be convicted as aforesaid, he shall be immediately removed from office. [G. S. 1868, ch. 36, § 65, Oct. 31.]

(2726) Perjury. § 66. If any person challenged as unqualified to vote shall be guilty of willful and corrupt swearing or affirming in taking any oath or affirmation prescribed by this act, such person shall be adjudged guilty of perjury, and upon conviction thereof shall suffer the punishment attached by the laws of this state to the crime of perjury. [G. S. 1868, ch. 36, § 66, Oct. 31.]

(2727) Receiving illegal vote. § 67. If any judge of the election shall knowingly receive or sanction the reception of a vote from any person not having all the qualifications of an elector prescribed by this act, or receive or sanction the reception of a ballot from any person who shall refuse to answer

any question which shall be put to him in accordance with the provisions of this act, or shall refuse or sanction the refusal by any other judge of the board to which he shall belong to administer either of the oaths or affirmations prescribed by the third [second] article of this act, he shall upon conviction thereof be subject to the same punishment as is prescribed in section seventy-six [sixty-five]. [G. S. 1868, ch. 36, § 67, Oct. 31.]

(2728) Falsely personating. § 68. Any person who shall falsely personate any voter and vote under the name of such voter, shall upon conviction be punished by confinement and hard labor not exceeding three years. [G. S. 1868, ch. 36, § 68, Oct. 31.]

(2729) Prosecutions. § 69. All prosecutions under the provisions of this act shall be by indictment or information before the district court in the county where the offense shall have been committed. [G. S. 1868, ch. 36, § 69, Oct. 31.]

(2730) Fines. § 70. All fines incurred under this act shall be paid into the county treasury where the offense was committed, for the use of such county. [G. S. 1868, ch. 36, § 70, Oct. 31.]

ARTICLE 6.—CONTESTED ELECTIONS.

(1744) Commissions to take. § 84. Nothing herein contained shall be construed to abridge the right of either branch of the legislature to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial. [G. S. 1868, ch. 36, § 84, Oct. 31.]

COUNTY OFFICERS.

(2745) Causes for contest. § 85. The election of any person declared duly elected to any county office, may be contested by any elector of the county—*First*, for mal-conduct, fraud or corruption on the part of the judges of election in any township or of any of the boards of canvassers, or on the part of any member of either of those boards; *second*, when the contestee was not eligible to the office at the time of the election; *third*, when the contestee has been convicted of an infamous crime

before the election, and the judgment has not been reversed, annulled or set aside, nor the contestee pardoned, at the time of the election; *fourth*, when the contestee has given or offered any elector or any judge, clerk or canvasser of the election any bribe or reward, in money, property or thing of value, for the purpose of procuring his election; *fifth*, when illegal votes have been received, or legal votes been rejected, at the polls, sufficient to change the result; *sixth*, for any error or mistake in any of the boards of judges or canvassers, in counting or in declaring the result of the election, if the error or mistake would affect the result; *seventh*, for any other cause (though not enumerated above) which shows that another was the legally-elected person. [G. S. 1868, ch. 36, § 85, Oct. 31.]

(2760) Required to answer. § 100. It shall be lawful to require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and, if he was not a qualified voter in the township or ward in which he voted, then to require him to answer for whom he voted; and, if the witness answers such questions, no part of his testimony shall be used against him in any criminal action. [G. S. 1868, ch. 36, § 100, Oct. 31.]

CHAPTER 39.—FEES AND SALARIES.

(3004) Clerk of district court. § 2. The clerks of the district courts of the counties in this state shall receive as their only compensation for the services required by law to be performed by clerks of the district court, the following-named fees: For filing each paper, five cents; docketing each action on appearance docket, fifteen cents; docketing action on trial and bar dockets, each, ten cents; each entry on appearance docket other than docketing action, five cents; entering every order, motion, rule, plea, report, verdict, or arraignment, ten cents; entering judgment not exceeding five folios, forty cents; each

additional folio, ten cents; entering satisfaction of judgment, twenty-five cents; each indexing, five cents; issuing any writ, except as otherwise provided, twenty-five cents; issuing subpoena, all the names contained in one præcipe to be contained in one subpoena, twenty-five cents; issuing any order of attachment, replevin, arrest, execution sale, or order to carry sentence of criminal into execution, fifty cents; issuing commission to take deposition, fifty cents; administering each oath in open court, five cents; impaneling and swearing jury, fifty cents; taking and certifying affidavit, twenty-five cents; approving bond, including justification, fifty cents; docketing judgment, twenty-five cents; taxing costs and making fee bill, per folio, ten cents; making any record or copying any paper required to be copied, per folio, seven cents; certifying fees of jurors and witnesses to county board, each name, five cents; entering declaration of alien to become a citizen, and certified copy of same, one dollar; entering final admission of alien, and certified copy of same, one dollar; taking and entering recognizance, fifty cents; making fee bills in state cases, per folio, seven cents; entering indictment in indictment record, fifty cents; entering abstract of mechanic's lien, in mechanic's lien docket, fifty cents; certificate and seal, twenty-five cents. [Laws 1875, ch. 94, § 1, May 15.]

(3006) **Sheriff.** § 4. The sheriff of each county shall receive for his services the following fees, and none other: Serving and returning any writ, process, order, or notice, except as hereinafter provided, for the first person fifty cents, for each additional person twenty-five cents; serving warrant and making return thereof, seventy-five cents; making arrest as peace officer, fifty cents; serving order of attachment, arrest, or replevin, and returning the same, fifty cents; making levy under execution, fifty cents; appraisement of property, fifty cents; return of "No property found," twenty-five cents; return of "Not found," each person, five cents; approving and returning undertaking, bond, or recognizance, fifty cents; advertising property for sale, fifty cents; offering for sale or selling prop-

erty, fifty cents; taking inventory of personal property, each day, one dollar; sheriff's deed and acknowledgment, to be paid out of the proceeds of the sale of real estate conveyed, one dollar and fifty cents; summoning talesmen, each, five cents; for every mile actually and necessarily traveled each way in serving or endeavoring to serve any writ, process, order, venire, or notice, ten cents: *Provided*, No mileage shall be charged when the distance does not exceed one mile. For attending jail when occupied by prisoner or prisoners, one dollar per day; for boarding and lodging of each prisoner, forty cents per day, exclusive of fuel, lights, furniture, and bedding, where jail is provided, and sixty cents per day where no jail is provided: *And provided further*, That no mileage shall be taxed or allowed and no person shall be required to pay any mileage unless at the time of making return the sheriff make and file with his return, or as a part thereof, a statement showing the distance actually and necessarily traveled in making service on the first person, who shall be named by him when the writ contains the name of more than one person, and the distance actually and necessarily traveled from the place of making the first service on the second person, who shall be named by him, and so on for each person served, and the distance actually and necessarily traveled in returning, so that the whole route traveled by the sheriff in making service shall clearly appear. For each mile actually and necessarily traveled in collecting or endeavoring to collect or endeavoring to find property to satisfy personal taxes under warrants, ten cents, and the said fees to be paid by the county in the event of failure to collect or failure to find property with which to satisfy said tax warrants; attending any court of record, one dollar and fifty cents per day; executing writ of *habeas corpus*, fifty cents; executing order of commitment, twenty-five cents; ten cents per mile and transportation and board for prisoner under requisition when made by the governor, as provided by section three hundred and fourteen, chapter eighty-two, General Statutes of 1868; commission for collecting money on sale, first one hundred dollars three per cent., the next four hundred

dollars two per cent., the second five hundred dollars one per cent., "all over one thousand dollars one-half of one per cent.," and one-half the foregoing rates on collections without sale; for posting each notice of election, five cents, and ten cents per mile for each mile actually and necessarily traveled: *Provided*, That no mileage shall be allowed where the distance traveled is less than one mile. Sheriffs may, where jails are insufficient for the safe-keeping of prisoners, employ such guards as are actually necessary. For the service of said guard or guards the board of county commissioners shall allow the sheriff reasonable compensation, to be paid out of the county treasury. [Laws 1881, ch. 107, § 1, March 2.]

The duty of keeping the county jail and supplying the prisoners committed thereto with board and lodging devolves upon the sheriff, and to him alone is the county liable for the same. (*Hendricks v. Chautauqua Co.*, 35 K. 483.)

A sheriff is not entitled to receive mileage fees for the miles he travels in endeavoring to serve a personal-property tax warrant where no property is found, and where he makes return of "No property found." (*Thralls v. Comm'rs Sumner Co.*, 24 K. 594.)

The board of county commissioners of Leavenworth county have the authority to make contracts for the services of guards at the county jail of that county, when, in their judgment, there exists a public necessity for the employment of persons for such purpose. (*Mitchell v. Leavenworth Co.*, 18 K. 188.)

Where a guard at the county jail of Leavenworth county was originally employed by the sheriff of the county, without consultation with the members of the board, and the services of the guard were necessary and required for the proper care and safety of the public jail and prisoners, and the services of the guard were rendered with the knowledge of the board, and the board, at a regular session, in consideration of such services fixed the compensation thereof, and ordered that the person so employed should be paid said compensation, and had said orders duly entered upon the journal of their proceedings, and the services of the guard were of the full value of the compensation allowed, *held*, that the county is liable in an action to recover for such services the compensation so allowed by the board. (*Mitchell v. Leavenworth Co.*, 18 K. 188.)

A sheriff is not entitled, as a matter of right, to extra compensation over and above the amount fixed by law for boarding prisoners, although he may have to carry the provisions fifty rods and the water one hundred and sixty rods, and although the cells of the jail may be small and inconvenient, and although the weather may be cold and disagreeable. (*Atchison v. Tomlinson*, 9 K. 167; *Republic Co. v. Kindt*, 16 K. 157.)

Service of a writ is the actual performance of the duty commanded by it; and when there is no performance of that duty, from whatever cause, there is no service. (*Labette Co. v. Franklin*, 16 K. 450.)

After the sheriff has been paid by the county sixty cents per day for boarding each prisoner confined in the county jail, and has been paid in full for furnishing other supplies, he cannot be allowed by the county commissioners, nor by the district court on appeal, an additional amount for services and labor in furnishing said board or said supplies. (*Atchison Co. v. Tomlinson*, 9 K. 167.)

(3018) Failure to make statement. § 16. If any county clerk shall fail to make to the county commissioners the quarterly report under oath, as herein required, he shall forfeit ten dollars for each day he shall negligently fail so to do; and the board of county commissioners shall in no event audit or order to be paid any quarterly installment of the salary as herein provided until such report shall have been made by the county clerk as herein provided; and if any board of county commissioners shall audit and order to be paid any quarterly or other installment of such salary, until the report be made and sworn to by the county clerk as herein provided, each member of said board shall be subject to a fine of one hundred dollars, to be recovered for the use of the common-school fund as in other cases. [Laws 1875, ch. 96, § 6, May 15.]

(3022) Statement of treasurer. § 20. He shall, on the first Monday of January, and the first Monday after the first Tuesday of April, and the first Mondays of July and October of each year, make out and present to the board of county commissioners a detailed statement of the amount of fees by him received during the preceding quarter, together with the amount of fees charged and which are due and unpaid; which report shall be under oath, and the same shall be filed with the county clerk. [Laws 1875, ch. 93, § 3, as amended by Laws 1877, ch. 107, § 1, May 1.]

(3026) Failure to make statement. § 24. If any county treasurer shall fail to make to the county commissioners a quarterly report under oath, as herein required, he shall forfeit ten dollars for each day he shall willfully fail so to do, and the board of county commissioners shall in no event audit or order to be paid any quarterly installment of the salary as herein provided, until such report shall have been made by the county treasurer, as herein provided; and if any board of county commissioners

shall audit and order to be paid any quarterly or other installment of such salary, until the report be made and sworn to by the county treasurer as herein provided, each member of said board voting for such allowance shall be subject to a fine of one hundred dollars, to be recovered for the support of common schools of the county, as in other cases. [Laws 1875, ch. 93, § 6, May 15.]

(3031) In pension cases. § 29. That no judge or clerk of any court, county clerk, notary public, justice of the peace, or any other person authorized to administer oaths, shall be allowed to charge any discharged soldier or seaman, or the widow, orphan, or legal representative thereof, more than fifty cents for administering any oath, or giving any official certificate for the procuring of any pension, bounty or back pay, nor for administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor more than fifteen cents for all services rendered in perfecting any one voucher. [Laws 1871, ch. 83, § 1, March 2.]

(3032) Penalty. § 30. Any such officer who may accept more than fifteen cents for any such service shall be deemed guilty of a misdemeanor, and fined in any sum not less than twenty-five dollars nor more than fifty dollars. [Laws 1871, ch. 83, § 2, March 2.]

(3033) Coroner. § 31. The coroner of each county shall receive for holding an inquest three dollars per day for each day necessarily and actually employed; for all services performed by him in holding such inquest, the same fees as justices of the peace for like services in criminal cases; for performing the duties of sheriff, the same fees as sheriff; and for every mile necessarily and actually traveled in the discharge of his official duty, ten cents. [G. S. 1868, ch. 39, § 10, March 10.]

On all money collected on execution, four per cent.

For keeping property taken on replevin or attachment, a reasonable compensation, to be allowed by the court. [G. S. 1868, ch. 39, § 14, March 10.]

(3038) Witnesses. § 36. Witnesses shall receive the fol-

lowing fees: For attending before any court or grand jury, or before any judge, referee or commissioners, per day, one dollar and fifty cents (\$1.50); for attending before any justice of the peace, per day, fifty (50) cents; for each mile necessarily and actually traveled in going to and returning from the place of attendance, ten (10) cents: *Provided*, That no mileage shall be allowed where the distance is less than two miles. No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel; and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case; and no juror shall receive pay as witness while serving as such juror. [G. S. 1868, ch. 39, § 14, as amended by Laws 1871, ch. 84, § 2, Feb. 28.*]

Where an action is instituted in the district court of one county and is taken on a change of venue to the district court of another county, and the plaintiff in the action has a subpoena for various witnesses issued from the district court to which the case is taken to the sheriff of the county in which the case was instituted, and the sheriff in that county serves such subpoena upon the witnesses, and the witnesses attend the trial in the county to which the case is removed, *held*, that the plaintiff cannot recover as costs from the defendant the mileage fees of such witnesses, nor the fees of the sheriff for serving the subpoena. (*Mylius v. St. L. Ft. S. & W. Rld. Co.*, 31 K. 232.)

Where witnesses are subpoenaed to attend a trial in the district court, and are present at the day named in response to such subpoena, and thereupon, on application of both parties, the court postpones the trial to some subsequent day in the term, and notifies the witnesses to be present on such subsequent day without further subpoena, *held*, that such witnesses are justified in returning home and remaining until such subsequent day, and are entitled to mileage for attending court on that day. (*U. P. Rly. Co. v. Harris*, 29 K. 275.)

C., who was an important witness in a criminal case, and who resided within seventeen miles of the place where the trial was subsequently to be had, entered into a recognizance for his appearance at the next term of the court, to serve as a witness in the case on the part of the state. Afterward, but before the next term of the court, he changed his residence, removing out of the state, and at least 1,600 miles from the place of the trial. He attended at the next term of the court, and was a witness in the case. *Held*, That he is entitled to receive mileage fees for the distance necessarily and actually traveled in going from the state line to the place of trial and returning, and no more. (*Lyon Co. v. Chase*, 24 K. 774.)

* The date of publication of this act is not given in the Session Laws. It was in fact published Feb. 28, 1871.

(3042) Paid by county. § 40. In all cases where the fees prescribed by this act, in criminal cases, for the sheriff, clerk, constables, justices of the peace, witnesses for the state and jurors, are not paid by the defendant or the prosecuting witness, they shall be paid by the county in which the criminal prosecution is instituted: *Provided*, That no such fees shall be paid by the board of county commissioners until the sheriff shall have filed his affidavit that said fees cannot be collected from any other source. [G. S. 1868, ch. 39, § 19, as amended by Laws 1881, ch. 108, § 1, March 4.]

Prior to the enactment of ch. 108 of the Laws of 1881, a county was not liable for costs in a prosecution wherein the accused was charged with a felony, but was convicted of only a misdemeanor that was included in such charge. (Comm'rs of Johnson Co. v. Wilson, 19 K. 485; Commissioners v. Negbaur, 34 K. 285.)

A proceeding in *habeas corpus* brought by one who, upon an examination before a magistrate on a criminal charge, has been committed for trial, is in effect an appeal from such examination, and like it is to be considered a criminal case within the scope of § 1, ch. 108, Laws 1881. (Gleason v. McPherson Co., 30 K. 53.)

A county is not liable for the costs of the sheriff for serving subpoenas and other papers in a bastardy case prosecuted under ch. 47, Comp. Laws 1879, "providing for the maintenance and support of illegitimate children." (Gleason v. McPherson Co., 30 K. 492.)

The proviso to § 13, ch. 39, Comp. Laws 1879, "that no more than ten dollars costs in criminal cases, exclusive of witnesses', county attorney's and jury fees, shall be charged in any case," is not repealed, either in terms or by implication, by ch. 108, Laws 1881, the same being an act to amend § 19 of said ch. 39, and restricts to ten dollars the amount of costs which may be taxed in a justice's court, for other than the parties named, in every criminal case brought in that court, whether for preliminary examination or final trial, and whether the party liable for payment be the defendant, the prosecuting witness, or the county. (Keirsey v. Labette Co., 30 K. 576.)

Ch. 108, Laws of 1881, not only repeals § 19, ch. 39, Gen. Stat. 1868, (Comp. Laws of 1879, p. 446,) but also repeals by implication § 27, ch. 83, Gen. Stat. of 1868. (Comp. Laws of 1879, p. 777; Labette Co. v. Keirsey, 28 K. 40.)

Under § 19, ch. 39, Laws of 1868, (Comp. Laws of 1879, p. 446,) as amended in 1881, (Laws of 1881, ch. 108, § 1,) where a *nolle prosequi* is entered in a criminal action, and no judgment for costs is rendered against either the defendant or the prosecuting witness, or against any other person, *held*, that after the proper fee-bill and affidavit have been made and presented to the board of county commissioners, the county is liable for the fees of the clerk of the dis-

trict court which have accrued in such criminal action. (*Bedillon v. Cowley Co.*, 27 K. 592.)

A judgment of conviction in a criminal case in the district court carries costs against the defendant. (*Commissioners v. Whiting*, 4 K. 273; *State v. Granville*, 26 K. 158.)

As the district court has jurisdiction, concurrently with justices of the peace, of misdemeanors, if the defendant be bound over on a preliminary examination before a justice of the peace in answer to a charge of felony, and thereafter on trial in the district court is found guilty of only a misdemeanor, which might have been tried before a justice, the costs of the preliminary examination are properly taxable against the defendant, and this notwithstanding that on such preliminary examination he demanded that the charge of felony be abandoned and he be put upon trial simply for the misdemeanor. (*State v. Granville*, 26 K. 158.)

Held, That § 22, act of March 6, 1862, providing that the fees of the clerk and sheriff, where the state fails to collect during the vacation following the sentence, shall be paid out of the county treasury, gives a new rule for the payment of the costs made by defendant, of clerk and sheriff, and that where the state fails to collect as provided the county is liable therefor. This section makes it the duty of the state to collect the costs of defendant during the vacation following the sentence, if possible. (*Shawnee Co. v. Whiting*, 4 K. 273.)

(3043) Costs. § 41a. No county in this state shall be liable for costs of any kind in criminal cases, whether examinations or trials, had before a justice of the peace, unless in case of conviction, or that the same have been instituted under the instructions and advice of the county attorney of such county: *Provided*, That the county may be liable for such costs, in the same manner and to the same extent in these cases as in others, whenever the county attorney shall certify in writing upon the fee bill in any case that it was proper that such case should have been instituted, and that consultation with him prior thereto was impracticable. [Laws 1889, ch. 128, § 1, March 6.]

(3045) Statement to commissioners. § 43. Within ten days after the close of each term of a court of record, the clerk thereof shall return to the board of county commissioners a statement of the attendance of jurors at such term, and their mileage as taken by him, together with a statement of the attendance and mileage of witnesses in all criminal cases, claimed, and for which the county is liable. [G. S. 1868, ch. 39, § 21, March 10.]

(3051) Criminal examination. § 49. It shall be the duty

of every justice of the peace to tax the costs of every criminal examination or trial before him, and certify the same to the board of county commissioners, in all cases in which the county is liable. [G. S. 1868, ch. 39, § 27, March 10.]

(3052) Collect execution. § 50. It shall be the duty of the sheriff or other officer, collecting costs on execution, in this state, after retaining his own fees, to pay the residue of such costs collected to the clerk of the court from which the execution issued, or to the justice, and take a receipt therefor. [G. S. 1868, ch. 39, § 28, March 10.]

(3054) Sheriff—fees. § 52. That the sheriff of each county in this state shall, at the close of any term therein having jurisdiction of felonies, convey all prisoners to the penitentiary at the same time they may have been sentenced there from said term of court; and he shall receive from the state for his services in going to and returning from said prison, the sum of three dollars per day for the time actually so employed, and mileage at the rate of three cents per mile for each mile actually traveled and three cents per mile for each person conveyed: *Provided*, That when more than one convict is taken at the same time the sheriff shall receive, in addition to the above compensation, fees for necessary guard or guards for the safe conveyance of the said extra convicts at the rate of two dollars per day for the time actually and necessarily employed by said guard or guards in going to and returning from said penitentiary, and mileage for said guard or guards at the rate of three cents per mile for each mile actually and necessarily traveled, and for actual amount of expenses of boarding sheriff, guards and prisoners going to the penitentiary and returning therefrom: *And provided further*, That no more than one guard shall be employed by the state unless the number of extra convicts shall exceed three, and for every additional number of three convicts conveyed at one and the same time there shall be only one extra guard, at the rates hereinbefore provided. [Laws 1891, ch. 81, § 1.]

(3055) Penalty for failure to comply. § 53. Should any sheriff fail to take all convicts at the same time to the state prison who may be convicted at any one term of court, as herein provided, or shall he knowingly demand or receive greater compensation than is expressly given herein by the preceding section, he shall be guilty of a misdemeanor, and upon conviction by any court having competent jurisdiction shall be fined in any sum not less than twenty-five dollars nor more than five hundred dollars for each offense. [G. S. 1868, ch. 39, § 31, March 10.]

CHAPTER 41.—FERRIES.

(3111) Boat. § 7. Every ferryman shall keep at his ferry a boat or boats, in good repair, suitable to the wants of the public, and sufficient hands to attend, on all occasions. [G. S. 1868, ch. 41, § 7, Oct. 31.]

(3112) Penalty for neglect. § 8. Every keeper of a ferry failing to give such due attention, shall for every offense forfeit five dollars, and for failure to keep each boat in good repair shall forfeit ten dollars for each day during the continuance of such failure, to the county where the ferry is situated; and shall be liable for all damages that any person may sustain thereby, to be recovered by action in any court having jurisdiction. [G. S. 1868, ch. 41, § 8, Oct. 31.]

(3113) List of rates. § 9. Every keeper of a ferry shall keep a list of the legal rates of ferriage, printed or written in a legible hand, constantly posted up at some public place at the ferry or ferry house. [G. S. 1868, ch. 41, § 9, Oct. 31.]

(3114) Penalty for neglect. § 10. If any keeper of a ferry fail to comply with the provisions of the preceding section, he shall for every day such list is not posted up forfeit not less than ten dollars to the county. [G. S. 1868, ch. 41, § 10, Oct. 31.]

(3115) Unlicensed ferry. § 11. If any person demand or

receive pay for services at any ferry that is not licensed, he shall upon conviction thereof for every such offense be fined not less than twenty dollars, or be imprisoned in the county jail not less than ten nor more than thirty days, or be punished by both such fine and imprisonment. [G. S. 1868, ch. 41, § 11, Oct. 31.]

Hence, where a defendant is prosecuted by indictment for keeping a ferry without a license, it is incumbent on the prosecution to prove that the defendant had no license. (*Territory v. Reyburn, McC. 134.*)

(3116) Penalty, how recovered. § 12. Any penalty imposed by the tenth [eighth] or twelfth [tenth] sections of this act, may be recovered before any court having jurisdiction, in the name of the county. [G. S. 1868, ch. 41, § 12, Oct. 31.]

(3122) Obstructing by steamboat. § 18. If the master or commander of any steamboat shall land at the platform or known landing-place of any public ferry, and shall intentionally obstruct the passage of any ferry boat, or moor or unload against, over or upon the same, without the consent of the owner of such ferry, such master or owner of such steamboat shall forfeit and pay to the legal possessor of such ferry landing fifty dollars for each offense, to be recovered by action before a justice of the peace, and shall be liable to an action for damages, to be recovered before any court having competent jurisdiction. [G. S. 1868, ch. 41, § 18, Oct. 31.]

CHAPTER 42.—FIRES.

(3134) Duty of fire overseer; neglect. § 11. That it shall be the duty of each fire overseer in any township where this act shall apply, to cause, where the same can be done, sufficient prairie to be broken on the line of his district, in two strips not more than one rod wide each, and said strips to be not more than two rods apart in places where breaking cannot be done; then he shall cause one or more strips to be mowed, and the mowing to be burned, before or immediately after the first kill-

ing frost of each year. The fire overseer shall be authorized to adopt any other means that may be at his disposal to secure their respective districts from the incursions of prairie fire into his district; and any fire overseer failing to use proper exertion, and willfully neglecting his duties as prescribed in this act, shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than fifty dollars nor more than five hundred dollars. [Laws 1873, ch. 89, § 7, March 27.]

CHAPTER 42b.—FISH.

(3147) **Dams to have fish-ways.** § 4. It shall be unlawful for any person or company to obstruct any of the streams in the state of Kansas by building a dam, or otherwise, without constructing a "fish-way." [Laws 1877, ch. 117, § 4, March 10.]

(3149) **Lime.** § 6. It shall be unlawful to catch, or attempt to catch, or to kill any fish in any of the inland waters of the state of Kansas by poisoning the water with lime or any deleterious substances whatever, or by making any obstruction to the natural transit of fish for the purpose of catching the same. [Laws 1877, ch. 117, § 6, as amended by Laws 1886, ch. 108, § 2, as amended by Laws 1889, ch. 148, § 1, April 17.]

(3150) **Obstruction.** § 7. It shall be lawful for any person to remove any obstruction which has been placed in a stream for the purpose of catching fish. [Laws 1886, ch. 108, § 3, March 25.]

(3151) **Misdemeanor.** § 8. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars nor more than fifty dollars. [Laws 1886, ch. 108, § 4, March 25.]

(3152) **Same.** § 9. It shall be unlawful to catch, or attempt to catch, or to kill any black bass, croppies, perch or wall-eyed pike by means of any drag net, gill net, drift net,

trammel net, seine, fish pot, set net, wire pond, or any device whatever except by rod, line, and hook. [Laws 1889, ch. 148, § 2, April 17.]

(3153) Lawful to catch. § 10. It shall be lawful to catch any other fish not mentioned in section two of this act, at any time except during the months of May and June in each year. [Laws 1889, ch. 148, § 3, April 17.]

(3154) Original section two of chapter one hundred and eight, Session Laws of 1886, is hereby repealed. [Laws 1889, ch. 148, § 4, April 17.]

(3155) Penalty for violation of act. § 11. Any person or company violating any of the sections of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined for violating section four or five of this act, not less than one hundred nor more than one thousand dollars; and for violating section seven or eight of this act, shall be fined not less than five nor more than fifty dollars, and shall stand committed until such fine is paid. [Laws 1877, ch. 117, § 8, March 10.]

(3156) Duty of commissioner. § 12. It shall be the duty of the fish commissioner to see that the provisions of this act are enforced, and for this purpose shall have the power to call to his assistance the county attorney of any county in which the provisions of this act are violated, to manage and prosecute the case. [Laws 1877, ch. 117, § 9, March 10.]

(3158) Unlawful to kill, etc. § 14. It shall hereafter be unlawful for any person or persons to kill or take fish, or attempt to kill or take fish, in any waters of the state of Kansas, by means of dynamite, giant powder, nitro-glycerine, or any other explosive substance, placed in or upon the water wherein such fish may be. [Laws 1883, ch. 114, § 1, March 7.]

(3159) Penalty. § 15. Any person or persons found guilty of violating the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by

a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. [Laws 1883, ch. 114, § 2, March 7.]

(3160) Protection of fish. § 16. Any person who shall willfully or maliciously cut, dig, break down or open any gate, bank, embankment or side of any pond, creek or spring, the property of another, used for the purpose of propagating or growing carp or other fish; or who shall use means to destroy the fish, young fry, or eggs, either by seining, spearing, or by catching with hook or line, or other instrument; or by placing destructive fish or reptiles within any such pond, creek, or spring; or who shall willfully befoul the waters of the same, or commit a nuisance therein in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than two hundred dollars, and may be imprisoned in the county jail not exceeding sixty days, or both. [Laws 1889, ch. 149, § 1, March 15.]

CHAPTER 44.—FUGITIVES FROM JUSTICE.

(3171) Issue warrant. § 1. Whenever the executive of any other state or territory shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisites of the act of congress in that case made and provided, it shall be the duty of the governor of this state to issue his warrant, under the seal of the state, directed to any sheriff, coroner or other person whom he may think fit to intrust with the execution of such warrant. [G. S. 1868, ch. 44, § 1, Oct. 31.]

(3172) Warrant. § 2. The warrant shall authorize the officer or person to whom it is directed to arrest the fugitive anywhere within the limits of this state, and convey him to any place therein named, and shall command all sheriffs, coroners,

constables and other officers to whom the warrant may be shown to aid and assist in the execution thereof. [G. S. 1868, ch. 44, § 2, Oct. 31.]

(3173) Execution of. § 3. Every warrant so issued may be executed in any part of the state; and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place any person duly arrested by virtue thereof, as sheriffs and other officers by law have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance. [G. S. 1868, ch. 44, § 3, Oct. 31.]

(3174) Confined in jail. § 4. The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant; and the keeper of such jail shall receive and safely keep such prisoner, until the person having him in charge shall be ready to proceed on his route. [G. S. 1868, ch. 44, § 4, Oct. 31.]

(3175) Governor may appoint agent to demand offender. § 5. The governor of this state may, on application, appoint an agent to demand of the executive authority of any other state or territory any offender fleeing from the justice of this state: *Provided*, That such application is accompanied by sworn evidence that the party charged is a fugitive from justice, and that the application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of recovering the alleged fugitive to a foreign jurisdiction, with a view there to serve him with civil process; and also by a duly-attested copy of an indictment, or a duly-attested copy of a complaint or information made before a court or magistrate authorized to take the same, such complaint or information to be accompanied by an affidavit to the facts constituting the offense charged, by a person or persons having actual knowledge thereof, and such further evidence in support thereof as the governor may require. [Laws 1886, ch. 109, § 1, March 25.]

(3176) Before governor shall demand. § 5a. Before the governor of this state shall demand any fugitive from justice from the executive authority of any other state or territory, the county attorney of the county wherein the alleged crime is said to have been committed shall examine into the case, and if satisfied that a crime has been committed, and that the person charged is the guilty person, he shall so certify to the governor, with a certified copy of the affidavit, information or indictment presented, and ask a requisition to be made in accordance therewith. [Laws 1886, ch. 109, § 2, March 25.]

(3177) Applications for requisitions. § 5b. Applications for requisitions on the executive authority of any other state or territory for the surrender of fugitives from the justice of this state shall be made to conform to such rules and regulations as may be adopted and promulgated by the executive authority of this state. [Laws 1886, ch. 109, § 3, March 25.]

(3178) Governor deliver offender. § 5c. The governor of this state, in any case authorized by the constitution of the United States and the acts of congress made in pursuance thereof, may on demand deliver over to the executive authority of any other state or territory any person charged therein with treason, felony, or other crime committed therein: *Provided*, That such demand or application is accompanied by a duly-attested copy of an indictment, or a duly-attested copy of a complaint or information, certified as authentic, and also by sworn evidence that the demand is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of removing the alleged fugitive to a foreign jurisdiction, with a view there to serve him or her with civil process. [Laws 1886, ch. 109, § 4, March 25.]

(3179) Officer. § 5d. The sheriff or other officer to whom shall be intrusted the execution of a warrant issued by the governor of this state shall proceed forthwith to arrest the fugitive therein named, and on payment of all costs by the duly-authorized agent of the executive authority making the demand, such

fugitive shall be delivered to him, to be thence removed to the proper place for prosecution: *Provided*, That if the agent of the executive authority, as aforesaid, does not appear within thirty days from the date of the arrest so made, the sheriff shall discharge the person so imprisoned; and all costs and expenses, being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the state treasury. [Laws 1889, ch. 109, § 5, March 25.]

Section five, chapter forty-four of the General Statutes of eighteen hundred and sixty-eight, an act relating to fugitives from justice, and all acts or parts of acts in conflict herewith, are hereby repealed. [Laws 1886, ch. 109, § 6, March 25.]

This act to be in force from and after its publication in the statute book. [Laws 1886, ch. 109, § 7, March 25.]

Approved February 18, 1886.

An alleged fugitive from justice, extradited from one state to another, can be prosecuted in the state to which he has been extradited only for the offense for which he was extradited, until after he has had a reasonable time and opportunity afforded him to return to the place from which he was extradited. (State v. Hall, 40 K. 338.)

(3180) Fugitive from other state. § 6. When any person within this state shall be charged, on the oath or affirmation of any credible witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged. [G. S. 1868, ch. 44, § 6, Oct. 31.]

(3181) On examination; bail. § 7. If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county; or if the offense is bailable, take bail for his appearance at the next term of the district court in the county. [G. S. 1868, ch. 44, § 7, Oct. 31.]

(3182) Examination, how conducted. § 8. The judge or justice shall proceed in the examination in the same man-

ner as is required when a person is brought before such officer charged with an offense against the laws of this state, and shall reduce the examination to writing, and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the governor of this state without delay. [G. S. 1868, ch. 44, § 8, Oct. 31.]

(3183) Duty of governor. § 9. If, in the opinion of the governor, the examination contains sufficient evidence to warrant the finding an indictment, he shall forthwith notify the executive of the state or territory in which the crime is alleged to have been committed of the proceedings against the person arrested, and that he will be delivered on demand, without requiring a copy of an indictment to accompany the demand. [G. S. 1868, ch. 44, § 9, Oct. 31.]

(3184) Offender delivered up. § 10. When a demand shall be made for the offender, the governor shall forthwith issue his warrant, under the seal of the state, to the sheriff of the county wherein the party charged is committed or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the state. [G. S. 1868, ch. 44, § 10, Oct. 31.]

(3185) Arrested. § 11. If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the state, and to surrender him agreeably to the command of the warrant. [G. S. 1868, ch. 44, § 11, Oct. 31.]

(3186) Discharge and recognizance. § 12. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the district court may discharge the recognizance or continue it, according to the circumstances of the case, such as distance of the place where the offense is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like. [G. S. 1868, ch. 44, § 12, Oct. 31.]

(3187) Not kept beyond. § 13. In no case shall the party be kept in prison or held to bail beyond the end of the second term of the district court after the arrest; and, if no demand is made for him within that time, he shall be discharged. [G. S. 1868, ch. 44, § 13, Oct. 31.]

(3188) Forfeited recognizance. § 14. When any such recognizance shall be forfeited, it shall inure to the benefit of the state. [G. S. 1868, ch. 44, § 14, Oct. 31.]

(3189) Bond and security. § 15. When a complaint shall be made against any person, as provided by this act, the judge or justice shall take from the prosecutor a bond to the clerk of the district court, with sufficient security to secure the payment of the costs and expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned, with the examination, to the office of the clerk of the district court. [G. S. 1868, ch. 44, § 15, Oct. 31.]

(3190) How collected. § 16. Upon the determination of the proceedings in that court the clerk may issue fee bills, which shall be served on the principal securities in the bond by the sheriff, in the same manner as other fee bills; for which service the sheriff shall be allowed the same fees as for serving notices. [G. S. 1868, ch. 44, § 16, Oct. 31.]

(3191) Execution. § 17. If the costs and charges are not paid on or before the first day of the next term of the district court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bills were served. [G. S. 1868, ch. 44, § 17, Oct. 31.]

(3192) Sue on bond. § 18. Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond, for the recovery of the costs and charges. [G. S. 1868, ch. 44, § 18, Oct. 31.]

(3193) Not take from state. § 19. No person shall take or remove any fugitive from this state, or do any act toward such removal, unless authorized to do so pursuant to the pro-

visions of this act; and any person violating the provisions of this section shall forfeit and pay to the aggrieved party a sum not less than five hundred dollars. [G. S. 1868, ch. 44, § 19, Oct. 31.]

(3194) Bail. § 20. Whenever any person shall have been committed to the jail of any county upon examination for a bailable offense under the provisions of this act, he may be let to bail with sufficient surety for his appearance at the next term of the court of the county having criminal jurisdiction, such bail to be taken and approved by the court or judge of the court having criminal jurisdiction, or the probate judge. [G. S. 1868, ch. 44, § 20, Oct. 31.]

CHAPTER 45.—GAME.

(3195) Unlawful to kill, etc. § 1. It shall be unlawful for any person or persons, at any time excepting as hereinafter provided, to catch, kill, trap, shoot or ensnare, or to pursue with such intent, any wild bird except the wild goose, duck, hawk, excepting the harrier, crow, bluejay, snipe, curlew, plover, piper, bittern, heron, crane, and woodpecker. [Laws 1883, ch. 115, § 1, March 16.]

(3196) Prairie chicken; quail. § 2. It shall not be unlawful for persons to shoot or take possession of any pinnated grouse, or prairie chicken, between the first day of September and the first day of January. It shall, however, be unlawful to catch, trap or ensnare said birds at any time: *Provided*, It shall not be unlawful for a person to shoot quail on his own premises between the first day of November and the first day of January of each year. [Laws 1883, ch. 115, § 2, as amended by Laws 1886, ch. 110, § 1, Feb. 26.]

(3197) Consent of owner of land required. § 3. It shall be unlawful for any person or persons, at any time, to shoot, hunt or pursue after any wild bird or game upon the oc-

cupied or improved premises of another, or upon any traveled or public road that adjoins such occupied or improved premises, without having obtained permission or consent of the owner or occupant of such occupied or improved premises. [Laws 1883, ch. 115, § 3, as amended by Laws 1886, ch. 110, § 2, Feb. 26.]

In an action brought by T. against S., W. and P., the petition alleged among other things, that "the said defendants did unlawfully and with force, assault the said plaintiff, and there shoot and wound with shot from and out of a shotgun held in the hands of the said defendant S." The answer was a general denial. W. and P. had a separate trial, and on such trial the plaintiff introduced evidence, over the objections of the defendants, but with the permission of the court, to prove that S., with the coöperation of W. and P., was illegally, and in violation of a certain statute, hunting on the inclosed lands of another, without the consent of the owner, and that while so hunting, S., in the absence of W. and P., and without their knowledge, shot with a shotgun at a prairie chicken, and in doing so accidentally shot the plaintiff, and injured him. *Held*, That the evidence was admissible, and that the court below did not err in allowing it to be introduced. (*Williams v. Townsend*, 15 K. 563.)

(3198) Unlawful to sell. § 4. It shall be unlawful for any person, company or corporation at any time to buy, sell or barter within the state of Kansas any birds not excepted in section one, or the birds enumerated in section two of this act; and the having in possession by any person, company or corporation of any such birds when the shooting, catching or killing thereof is prohibited, shall be deemed *prima facie* evidence of the violation of this act: *Provided*, Nothing in this act shall be so construed as to prevent any person from the purchasing from any person who has legally killed the same, any of the birds mentioned in said chapter one hundred and fifteen of the Laws of eighteen hundred and eighty-three, for use as food in his own family, or the selling of the same, by the person having lawfully killed the same, to any person for use in his own family. [Laws 1883, ch. 115, § 4, as amended by Laws 1886, ch. 110, § 3, Feb. 26.]

Sec. 6 of the act of the legislature of Kansas of 1876 entitled "An act for the protection of birds," so far as it prohibits the transportation from Kansas to other states of prairie chickens which have been lawfully caught and killed, and have thereby lawfully become the subjects of traffic and commerce, is unconstitutional and void. (*The State v. Saunders*, 19 K. 127.)

And the whole of said act is unconstitutional so far as it relates to any animal except "birds." (*The State v. Saunders*, 19 K. 127.)

(3199) Punishment. § 5. Any person found guilty of violation of any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a justice of the peace shall be fined in a sum not less than five nor more than twenty-five dollars for each and every offense, and costs, together with attorney's fee of ten dollars, and shall be committed until paid. [Laws 1883, ch. 115, § 5, March 16.]

(3200) Justice employ attorney. § 6. In all prosecutions under this act, the justice before whom the same is brought may appoint some attorney at law for the purpose of managing the prosecution of the cause, and such attorney shall be entitled to a fee of ten dollars in each and every case, where conviction is had, in which he is appointed, which shall be taxed as costs in the case against defendant: *Provided*, The county shall in no case be held for said attorney's fees. [Laws 1883, ch. 115, § 6, March 16.]

(3201) Name of bird. § 7. That it shall not be necessary to prove on the trial or to state in the complaint the true name of the bird caught, killed, shot, trapped, netted or snared in violation of this act. [Laws 1883, ch. 115, § 7, March 16.]

(3202) Act not apply. § 8. The provisions of this act shall not apply to any person who shall kill or catch any wild bird or birds for the sole purpose of preserving them as specimens for scientific purposes: *Provided*, That in a prosecution for a violation of any of the provisions of this act, it shall not be necessary for the prosecution to prove that the killing or catching of any wild bird was not done for scientific purpose. [Laws 1883, ch. 115, § 8, March 16.]

CHAPTER 45A.—GRASSHOPPERS.

(3205) Road overseers. § 2. It shall be the duty of road overseers, immediately after receiving said order, to proceed at once to warn out all persons liable under section one of this act,

giving notice of the time and place of meeting, and the tools to be used, and the kind of work expected to be performed; and all work shall be done and performed under the direction of the road overseers. [Laws 1877, ch. 119, § 2, March 15.]

(3206) Penalty. § 3. Any person over eighteen years of age, warned out as is provided in this act, may pay the road overseer the sum of one dollar per day for the time so warned out; and in case any person shall fail to perform labor under this act or paying the sum of one dollar when so warned out, shall be adjudged guilty of a misdemeanor, and on conviction shall be fined the sum of three dollars for each day so failing or refusing, and the moneys so collected shall be expended by the road overseer in the destruction of grasshoppers in their respective road districts. [Laws 1877, ch. 119, § 3, March 15.]

CHAPTER 47.—ILLEGITIMATE CHILDREN.

(3252) Father arrested. § 1. When any unmarried woman who has been delivered of, or is pregnant with, a bastard child, shall make a complaint thereof, in writing, under oath, before any justice of the peace, charging any person with being the father of such child, such justice shall by his warrant cause such person to be arrested and brought before him. [G. S. 1868, ch. 47, § 1, March 18.]

The purpose of a proceeding in bastardy is to compel the father of an illegitimate child to assist in supporting the fruit of his immoral act, and to indemnify the public against the burden of supporting the child. (*In re Wheeler*, 34 K. 96.)

The relatrix, an unmarried woman, pregnant with a bastard child, commenced a prosecution before a justice of the peace under ch. 47 of Comp. Laws of 1879, against the reputed father, to charge him with the maintenance and education of the child, and while the proceedings were pending, entered on the docket of the justice an admission that provision had been made to her satisfaction for the maintenance of the child, as authorized by the 16th section of said chapter, and dismissed such proceedings. After the birth of the child, she commenced another prosecution for the same cause and purpose, before another justice of the peace, who sustained the charge and recognized the defendant to

appear before the district court, and transmitted a transcript of his proceedings to that court. In the district court the defendant pleaded the entry of satisfaction on the docket of the justice of the peace, in the first prosecution, in bar. *Held*, That as the relatrix was induced to make such entry of satisfaction by the false representations, deceit and fraud of the defendant, such satisfaction and entry are void, and not a bar to these proceedings for the same cause and purpose. *Held*, That such entry of satisfaction may be made before final judgment in any court in which the prosecution is pending. (*State, ex rel.*, v. Young, 32 K. 293.)

On the 18th of March, 1868, the legislature passed a new act entitled "An act providing for the maintenance and support of illegitimate children." and at the same time repealed the old act of that title. *Held*, That the father of an illegitimate child begotten under the old act but born under the new act may be compelled to contribute towards its support by a prosecution under the new act. (*Willets v. Jeffries*, 5 K. 470.)

(3253) Complaint. § 2. Upon the arrest of such person, such justice shall proceed to hear such complaint. [G. S. 1868, ch. 47, § 2, March 18.]

(3254) Prosecution; evidence. § 3. The prosecution shall be in the name of the state of Kansas, on the relation of the prosecuting witness; but the rules of evidence and the competency of witnesses shall be the same as in civil cases. [G. S. 1868, ch. 47, § 3, March 18.]

A recognizance given under § 5 of ch. 47, Comp. Laws 1879, conditioned that defendant appear at the next term of the district court to answer the complaint, and not depart without leave, and abide the judgment and orders of such court, is not satisfied when the defendant appears at the court and remains in attendance during the trial, but requires that he comply with and perform the judgment that shall be rendered against him. (*Jackson v. State*, 30 K. 88.)

A county is not liable for the costs of the sheriff for serving subpoenas and other papers in a bastardy case prosecuted under ch. 47, Comp. Laws of 1879, "providing for the maintenance and support of illegitimate children." (*Gleason v. McPherson Co.*, 30 K. 492.)

The proceedings may be prosecuted by the mother of such child if she is a single woman when she commences such prosecution, although she may have been a married woman when the child was born. (*Willets v. Jeffries*, 5 K. 470.)

(3255) Testimony of mother. § 4. The testimony of the mother shall be by such justice reduced to writing, read carefully to her, and by her be signed, and shall by such justice be returned to the district court with the other papers in such case. The failure of the justice so to do shall not be ground of dis-

missal in the district court, but such justice shall recover no fees in such case. [G. S. 1868, ch. 47, § 4, March 18.]

(3256) Adjudged father. § 5. If the justice, on the hearing, adjudge the defendant to be the father of such child, he shall require him to enter into a recognizance in a sum not less than two hundred nor more than one thousand dollars, with sufficient sureties, payable to the state of Kansas, and conditioned that he will appear at the next term of the district court of such county, to answer such complaint, and not depart without leave, and abide the judgment and orders of such court; and if the defendant fail to enter into such recognizance the justice shall commit him to jail until he be discharged by due course of law. [G. S. 1868, ch. 47, § 5, March 18.]

A recognizance given under § 5 of the act relating to illegitimate children, requiring the defendant to remain and abide the judgment and orders of the court, is complied with and fully performed when, after a verdict of guilty and judgment, and an order of commitment to the jail of the county on the failure of the defendant to give the bond, he is taken to the county jail and confined there in pursuance to the order of the court. (*Wheeler v. State*, 39 K. 163.)

Under § 5 of the act relating to illegitimate children, the words in the recognizance requiring the defendant to "abide the judgment and orders" of the court do not mean that the defendant or his sureties shall pay or satisfy the final judgment rendered in the case, but that when such judgment is rendered he will surrender himself into the custody of the court, ready and willing, as required by § 13 of the act, to secure the payment of such judgment by good and sufficient sureties, or in default thereof to be committed to jail until such security is given. (*Sowers v. State*, 37 K. 209.)

A recognizance given under § 5 of ch. 47, Comp. Laws 1879, conditioned that defendant appear at the next term of the district court to answer the complaint, and not depart without leave, and abide the judgment and orders of such court, is not satisfied when the defendant appears at the court and remains in attendance during the trial, but requires that he comply with and perform the judgment that shall be rendered against him. (*Jackson v. State*, 30 K. 88.)

A county is not liable for the costs of the sheriff for serving subpoenas and other papers in a bastardy case prosecuted under ch. 47, Comp. Laws of 1879, "providing for the maintenance and support of illegitimate children." (*Gleason v. McPherson Co.*, 30 K. 492.)

(3257) Transmit papers. § 6. After such hearing, the justice shall transmit any recognizance in such case, together with a transcript of his proceedings, and the other papers in the

cause, without delay, to the clerk of the district court of the proper county. [G. S. 1868, ch. 47, § 6, March 18.]

(3258) Discharge. § 7. Any person committed to jail for failure to give such recognizance may be discharged from custody by entering into such recognizance, with sufficient sureties, at any time after his commitment; such recognizance to be taken and approved by the justice before whom such proceeding was had. [G. S. 1868, ch. 47, § 7, March 18.]

(3259) Trial. § 8. The trial and proceedings of such prosecution, both before the justice and in the district court, shall, in all respects not herein otherwise provided for, be governed by the law regulating civil actions. [G. S. 1868, ch. 47, § 8, March 18.]

A recognizance given under § 5 of ch. 47, Comp. Laws 1879, conditioned that defendant appear at the next term of the district court to answer the complaint, and not depart without leave, and abide the judgment and orders of such court, is not satisfied when the defendant appears at the court and remains in attendance during the trial, but requires that he comply with and perform the judgment that shall be rendered against him. (*Jackson v. State*, 30 K. 88.)

(3260) Continuance. § 9. Upon any continuance granted either party, the court or justice granting the same shall require the defendant to enter into recognizance for his appearance at the time to which the cause may be continued; and in default of such recognizance, shall commit him to jail until he shall give such recognizance or be discharged by due course of law. [G. S. 1868, ch. 47, § 9, March 18.]

Under § 5 of the act relating to illegitimate children, the words in the recognizance requiring the defendant to "abide the judgment and orders" of the court do not mean that the defendant or his sureties shall pay or satisfy the final judgment rendered in the case, but that when such judgment is rendered he will surrender himself into the custody of the court, ready and willing, as required by § 18 of the act, to secure the payment of such judgment by good and sufficient sureties, or in default thereof to be committed to jail until such security be given. (*McGarry v. State*, 37 K. 9.)

The law of this case has been settled by the decision in *McGarry v. State*, 37 K. 9. The record before us sufficiently shows that the defendant below voluntarily appeared and surrendered himself into the custody of the court, as required by § 18 of the act relating to illegitimate children; and therefore it fully appears that no breach of the recognizance or bond has taken place. (*McGarry*

v. State, *supra*.) The judgment of the superior court must be reversed, and the case will be remanded for further proceedings in accordance with the views herein expressed. (Sowders v. State, 37 K. 209.)

(3261) Death of mother. § 10. The death of the mother shall not abate such prosecution, if the child is living; but a suggestion of record of the fact shall be made, and the name of the child substituted in the proceedings for that of the mother, and a guardian for the suit shall be appointed for that purpose, who shall not be liable for costs; and in such case, the testimony of the mother, taken in writing, before the justice, may be read in evidence, and shall have the same force as if she were living, and had testified to the same in court. [G. S. 1868, ch. 47, § 10, March 18.]

(3262) Trial. § 11. If the defendant, in the district court, deny the charge, the issue shall be tried by the court or a jury. [G. S. 1868, ch. 47, § 11, March 18.]

(3263) Adjudged father. § 12. If the court or jury find that the defendant is the father of such child, or such defendant, in court, shall confess the same, he shall be adjudged the father of such child, and stand charged with the maintenance and education thereof. [G. S. 1868, ch. 47, § 12, March 18.]

(3264) Judgment. § 13. Such court shall, on such finding or confession, render such judgment and make such order as may seem just for securing the maintenance and education to such child, by the annual payment to the mother, or if she be dead, or an improper person to receive the same, to such other person as the court may direct, and of such sum or sums of money as the court may order, payable at such time or times as may be adjudged proper. The judgment shall specify the terms of payment, and shall require of such defendant, if he be in custody, to secure the payment of such judgment by good and sufficient sureties; or in default thereof, he shall be committed to jail until such security be given. [G. S. 1868, ch. 47, § 13, March 18.]

The law of this case has been settled by the decision in McGarry v. The State, 37 K. 9. The record before us sufficiently shows that the defendant be-

low voluntarily appeared and surrendered himself into the custody of the court, as required by § 13 of the act relating to illegitimate children; and therefore it fully appears that no breach of the recognizance or bond has taken place. (*McGarry v. The State, supra.*) The judgment of the superior court must be reversed, and the case will be remanded for further proceedings in accordance with the views herein expressed. (*Sowers v. State, 37 K. 209.*)

The portion of the act which provides that the defendant, if he be in custody, shall be required to secure the payment of the judgment rendered against him by good and sufficient securities, and in case of default that he shall be committed to jail until the security is given, is not in conflict with § 16 of art. 2 of the constitution. (*In re Wheeler, 34 K. 96.*)

The charge of maintenance and education which the father of an illegitimate child may be adjudged to pay under the bastardy act, is not a debt in the sense in which that term is used in the provision of the constitution forbidding imprisonment for debt. (*In re Wheeler, 34 K. 96.*)

(3265) Imprisonment. § 14. No person adjudged to be the father of a bastard child shall be imprisoned for any failure to comply with any order, direction or judgment of the court or justice, for a term exceeding one year. [G. S. 1868, ch. 47, § 14, March 18.]

The purpose of a proceeding in bastardy is to compel the father of an illegitimate child to assist in supporting the fruit of his immoral act, and to indemnify the public against the burden of supporting the child. (*In re Wheeler, 34 K. 96.*)

(3266) Execution. § 15. Execution may issue on such judgment whenever any amount is due on the same, and shall be executed as in other cases. [G. S. 1868, ch. 47, § 15, March 18.]

(3267) Dismissal. § 16. The prosecuting witness may, at any time before final judgment, dismiss such suit, if she shall enter of record an admission that provision for the maintenance of the child has been made to her satisfaction; such entry shall be a bar to all other prosecutions for the same cause and purpose. [G. S. 1868, ch. 47, § 16, March 18.]

(3268) Limitation. § 17. No prosecution, under this act, shall be instituted after two years from the birth of such bastard child. [G. S. 1868, ch. 47, § 17, March 18.]

(3269) Reduction of payment. § 18. Upon the death of any bastard child, after judgment rendered as aforesaid, and

before the expiration of the time limited for the last payment on such judgment, the court rendering such judgment may make such reduction in the amount of the same as may be rendered proper and just in consequence of such death. [G. S. 1868, ch. 47, § 18, March 18.]

(3270) Death of child. § 19. The death of a bastard child shall not be cause of abatement or bar to any prosecution for bastardy; but the court trying the same shall on conviction give judgment for such sum as shall be deemed just. [G. S. 1868, ch. 47, § 19, March 18.]

(3271) Prosecution. § 20. The several county attorneys, within their respective counties, shall prosecute all causes originating under this act. [G. S. 1868, ch. 47, § 20, March 18.]

(3272) Survivor. § 21. In case of the death of the putative father of such child, after the preliminary examination before the justice, the right of action shall survive, and may be prosecuted against the personal representatives of the deceased, with like effect as if such father were living, except that no arrest of such personal representative shall take place, or recognizance be required of them. [G. S. 1868, ch. 47, § 21, March 18.]

CHAPTER 49.—IMPEACHMENT.

(3282) Impeachment. § 1. An impeachment is the prosecution, by the house of representatives, before the senate, of the governor or other officer, under the constitution, for misdemeanor in office. [G. S. 1868, ch. 49, § 1, Oct. 31.]

By constitutional provision, all impeachments are to be tried by the senate, the senators when sitting for that purpose being sworn, and a concurrence of two-thirds of those elected being necessary to a conviction; but as to when the senate shall sit for the purpose, or how the trial shall be conducted, the constitution is silent. (*State ex rel. v. Hillyer*, 2 K. 17.)

The independent jurisdiction of the senate of Kansas as a court of impeachment maintained, and held that there is no usage or right of attendance on a trial of impeachment by the house of representatives. (*State ex rel. v. Hillyer*, 2 K. 17.)

By express provision of law the senate, with the consent of the house, when organized and sitting as a court of impeachment, may adjourn to any period during their term of office not beyond the next regular meeting of the legislature, whether the house be in session or not at such time; and if it confines its acts within its duties as an independent body, they will be valid. It was competent for our legislature to pass a law authorizing such action. (*State ex rel. v. Hillyer*, 2 K. 17.)

The passage of the resolution of the house asking the senate to set the trial for a certain day, and the adjournment of the senate sitting as a court to that day, *held* an assent of the house to such adjournment, and within the meaning of the constitution; and the passage afterwards of the concurrent resolution adjourning the legislature *sine die*, was with reference to the law and the previous adjournment of the senate sitting as a court, and the meeting of such court was not in conflict with it. (*State ex rel. v. Hillyer*, 2 K. 17.)

The different resolutions of each branch of the legislature, and acts of both, relating to the same subject-matter, are to be taken together. (*State ex rel. v. Hillyer*, 2 K. 17.)

There is no constitutional inhibition of the session of one branch of the legislature when the other is not in session; and, *semble*, the separate action of one body may be valid in the absence or non-organization of the other. Constitutional provisions and limitations relating to the meeting and adjourning of the house of the legislature pointed out. (*State ex rel. v. Hillyer*, 2 K. 17.)

(3283) Articles. § 2. The articles of impeachment are the written accusation of the officer, drawn up and approved by the house of representatives. [G. S. 1868, ch. 49, § 2, Oct. 31.]

(3284) State what. § 3. The articles of impeachment shall state with reasonable certainty the misdemeanor in office for which the officer is impeached, and if there be more than one, they shall be stated separately and distinctly. [G. S. 1868, ch. 49, § 3, Oct. 31.]

(3285) Managers. § 4. When the articles of impeachment have been approved by the house of representatives, and an impeachment ordered, a board of managers shall be appointed by the house, of its own members, to prosecute it, whose chairman, within five days, shall lay the same before the senate. [G. S. 1868, ch. 49, § 4, Oct. 31.]

(3286) Hearing; summons. § 5. The senate shall appoint a day for hearing the impeachment, and the accused shall be required, by a summons issued by the secretary of the senate, to appear on that day. The summons shall be served by

delivering a copy of the same and of the articles of impeachment to the accused in person, if to be found, or leaving the copies at his residence, with some member of his family over sixteen years of age. [G. S. 1868, ch. 49, § 5, Oct. 31.]

(3287) Process. § 6. The secretary of the senate, at the request of the chairman of the board of managers, or of the accused, shall issue subpoenas for witnesses, and for producing books and papers; and in case of disobedience of the process, the senate shall order the secretary to issue process for arresting the witnesses and seizing the books and papers, which process may be executed by any sheriff, constable, or coroner. [G. S. 1868, ch. 49, § 6, Oct. 31.]

(3288) Power of senate. § 7. The senate shall have power to compel the attendance of witnesses, and to compel them to testify, and to compel the production of books and papers, and may enforce any order or process, by fine and imprisonment, to such an extent as may be necessary. [G. S. 1868, ch. 49, § 7, Oct. 31.]

(3289) Pay of witnesses and officers. § 8. Witnesses shall have the same compensation for travel and attendance, and the same exemptions in going, remaining, and returning, as witnesses in the district court; and officers executing the process and orders of the senate shall have the same fees as are allowed sheriffs for like services in the district court. [G. S. 1868, ch. 49, § 8, Oct. 31.]

(3290) Oath. § 9. Before the senate shall proceed to try the impeachment, the president of the senate, and every senator present, shall take the following oath or affirmation: "I do solemnly swear (or affirm), that I will faithfully and impartially try the impeachment against A. B., and do justice according to the law and the evidence." [G. S. 1868, ch. 49, § 9, Oct. 31.]

(3291) Absence. § 10. The senate shall determine what amount of absence of a senator, during the trial, shall exclude the senator from voting in the final decision. [G. S. 1868, ch. 49, § 10, Oct. 31.]

(3292) Costs. § 11. If the accused is acquitted, he shall

be entitled to his costs, to be taxed by the secretary of the senate, and paid by the state; and if convicted, he shall pay the costs, unless the senate otherwise decide. [G. S. 1868, ch. 49, § 11, Oct. 31.]

(3293) Power of senate. § 12. The senate, when organized and sitting as a court for the trial of an impeachment, shall have power to adjourn, from time to time, and hold sessions after the adjournment of the legislature. [G. S. 1868, ch. 49, § 12, Oct. 31.]

(3294) Powers of managers. § 13. The board of managers appointed by the house shall have all necessary powers for conducting the prosecution of such trials, and shall appoint their own officers. [G. S. 1868, ch. 49, § 13, Oct. 31.]

(3295) Compensation. § 14. The president, officers, and members of the senate, while sitting as a court of impeachment when the legislature is not in session, shall receive the same *per diem* and mileage allowed by law to said members and officers during the session of the legislature. [G. S. 1868, ch. 49, § 14, Oct. 31.]

(3296) Managers. § 15. Each member of the board of managers of the house, while actually employed upon such impeachment when the legislature is not in session, shall receive the sum of three dollars per day, and the same mileage as is provided for members of the senate. [G. S. 1868, ch. 49, § 15, Oct. 31.]

(3297) Attorney general. § 16. The attorney general shall be associated with the board of managers in the trial of any case of impeachment, but he shall not receive any additional pay for such services. [G. S. 1868, ch. 49, § 16, Oct. 31.]

(3298) Expenses. § 17. The auditor of state shall draw his warrants upon the treasurer for the payment of the expenses of the senate, incurred under the provisions of this act, upon presentation of a certificate of the president of the senate, and the affidavit of the party to whom the same may be due, that such service has been actually rendered; and in payment of the

expenses incurred by the board of managers, under the provisions of this act, upon presentation of a certificate from the chairman of said board of managers, and the affidavit above provided. [G. S. 1868, ch. 49, § 17, Oct. 31.]

CHAPTER 50.—INDIANS.

(3299) Selling or giving liquor. § 1. If any person shall, directly or indirectly, sell, exchange, give, barter, or dispose of any spirituous liquors, wine, or other intoxicating liquors, to any Indian within this state, under any circumstances, unless directed by a physician for medical purposes, such person upon conviction thereof shall be punished by fine not less than five dollars nor more than five hundred dollars, or imprisoned for not less than one month nor more than six months in the county jail, or both such fine and imprisonment. [G. S. 1868, ch. 50, § 1, Oct. 31.]

(3300) Indictment. § 2. It shall not be necessary to aver, in an indictment or information for an offense under this act, the kind or character of the liquor alleged to have been sold, exchanged, given, bartered, or disposed of, but it shall be sufficient, in that particular, if the indictment or information allege that such liquor was intoxicating. [G. S. 1868, ch. 50, § 2, Oct. 31.]

(3301) Witnesses § 3. Upon any trial under this act, Indians shall be deemed competent witnesses. [G. S. 1868, ch. 50, § 3, Oct. 31.]

(3302) Act not apply. § 4. This act shall not apply to sales of liquor to Indians who are citizens of the United States or of the state of Kansas. [G. S. 1868, ch. 50, § 4, Oct. 31.]

CHAPTER 50A.—INSURANCE.

(3331) Penalty. § 18. It shall be unlawful for any person, company or corporation in this state, either to procure, receive, or forward applications for insurance in any company or companies not organized under the laws of this state, or in any manner to aid in the transaction of the business of insurance with any such company, unless duly authorized by such company and licensed by the superintendent of insurance, in conformity to the provisions of this act; and any person violating the provisions of this section shall be liable to a penalty of five hundred dollars for each offense, to be collected as other penalties under this act. [Laws 1871, ch. 93, § 18, March 24.]

(3335) Penalties. § 22. Every violation of the provisions of this act shall subject the party violating the same to a penalty of not less than one hundred nor more than five hundred dollars for each violation, which shall be sued for and recovered in the name of the state of Kansas, by the county attorney of the county in which the company is located, or the agent or agents so violating shall reside; and one-half of such penalty, when collected, shall be paid into the treasury of said county, for the use of the county, and the other half to the informer. In case of the non-payment of such penalty, the party so offending shall moreover be liable to prosecution in any court of competent jurisdiction, and on conviction thereof shall be imprisoned for any period not exceeding six months, in the discretion of the court. [Laws 1871, ch. 93, § 22, March 24.]

Certificate issued by auditor to foreign insurance company is void unless the money required is paid into treasury. (*Hartford Fire Ins. Co. v. State*, 9 K. 310.)

(3336) To individuals, etc. § 23. The provisions of this act shall apply to individuals and partners, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the business of insurance. It shall be unlawful for any company, corporation or association, whether organized in this state or elsewhere, either directly or indirectly to engage in

the business of insurance, or to enter into any contracts substantially amounting to insurance, or in any manner to aid therein, in this state, without first having complied with all the provisions of this act. And any corporation, company or association violating the provisions of this section, and any individual, company, association or corporation aiding in any manner, either as agent or otherwise, in such violation, shall be liable to a penalty of five hundred dollars, to be collected as other penalties under this act. [Laws 1871, ch. 93, § 23, March 24.]

(3353) Failure to file statement; penalty. § 40. Every insurance company organized under any law of this state, failing to make and deposit such statement, or to reply to any inquiry of the said superintendent, shall be subject to a penalty of five hundred dollars, and an additional five hundred dollars for every month that such company shall continue thereafter to transact any business of insurance; and in the annual report required to be made by section thirteen of this act, said superintendent shall state what companies have and what companies have not complied with the foregoing section, and he shall also make such suggestions as to the condition and management of any company or companies as he shall deem best. [Laws 1871, ch. 93, § 40, March 24.]

(3475) Unlawful to Publish. § 147. It shall be unlawful for any company, association or corporation doing business under this act, or any person connected therewith, to advertise or publish any false or untrue thing which would have a tendency to aid in inducing persons to take a policy or certificate in such association or organization; and any person or persons so advertising or publishing such false or untrue thing shall be deemed guilty of a misdemeanor, punishable by fine for each and every offense. [Laws 1885, ch. 131, § 25, April 13.]

(3479) § 151. Every association, corporation, or officer thereof, or any other person, willfully violating any of the provisions of this act, shall be fined in any sum not less than fifty

dollars nor more than five hundred dollars, to be recovered by action in the name of the state; and on collection, paid into the county treasury for the benefit of the common-school fund. [Laws 1885, ch. 131, § 29, April 13.]

CHAPTER 52A.—IRRIGATION.

(3515) Injuring canal. § 2. Any person who shall willfully or maliciously cut, dig, break down or open any gate, bank, embankment or side of any ditch, canal, flume, feeder, or reservoir, the property of another, used for the purpose of irrigation, manufacturing, mining or domestic purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than three hundred dollars, and may be imprisoned in the county jail not exceeding ninety days: *Provided*, That this section shall only apply to tracts of lands where said ditch company has secured the "right-of-way" through the tract of land as cut or opened. [Laws 1885, ch. 134, § 1, May 1.]

(3515a) Contracts. Every person, association or corporation owning or controlling, or claiming to own or control, any ditch, canal or reservoir as is mentioned in the first section of this article, any officer or agent of such association or corporation, who shall, after demand in writing made upon him for the supply or delivery of water for irrigation, manufacturing, milling or domestic purposes, to be delivered from the ditch, canal or reservoir owned, possessed or controlled by him, and after tender of the lawful rates of compensation therefor in lawful money, demand, require, bargain for, accept or retain from the party making such application any money or other thing of value, or any promise or contract, or any valuable consideration whatever, as such royalty, bonus, premium, prerequisite or condition precedent as is by the provisions of the first section of this article prohibited, shall be deemed guilty of a misdemeanor,

and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the court. [Laws 1891, ch. 133, art. 8, § 2.]

(3515b) Rights. Every person, association or corporation owning or controlling, or claiming to own or control, any ditch, canal or reservoir such as is mentioned in the first section of this article, any officer or agent of such association or corporation, who shall, after demand in writing made upon him for the carriage or delivery of water for irrigation, milling, sanitary or domestic purposes, to be carried in or delivered from the ditch, canal or reservoir owned, possessed or controlled by him, and after tender of the lawful rate of compensation therefor in lawful money, refuse to furnish and deliver from such ditch, canal or reservoir any water so applied for, or carry therein any water the carriage whereof is so applied for, which water can or may be by use of reasonable diligence in that behalf and within the carrying or storage capacity of such ditch, canal or reservoir lawfully carried, furnished and delivered without infringement of prior rights, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the court: *Provided, however,* That when any person, association or corporation has heretofore constructed or shall hereafter construct any ditch, canal, conduit, reservoir or other works for the carrying or storage of waters in part for the irrigation of land belonging to such person or corporation, or for the enjoyment of such waters in part by such person or corporation for any other purpose whatsoever, and in part for the use of other persons or corporations, nothing herein contained shall be so construed as to require such person or corporation to yield up or deliver to others, or to suffer to be used by others, the water by him or it devoted to beneficial uses. [Laws 1891, ch. 133, art. 8, § 3.]

(3515c) Superintendent. Any superintendent having charge of any ditch, caual, conduit, or reservoir, who shall willfully neglect or refuse to deliver water as in this act provided to any person entitled thereto, shall on conviction thereof be fined not less than ten dollars or more than one hundred dollars, or be imprisoned in the county jail for not less than one month, or punished by both such fine and imprisonment; and the proprietors of such works shall moreover be liable in damages to the person or persons deprived of the use of water to which he or they were entitled, as in this act provided. [Laws 1891, ch. 133, art. 8, § 5.]

(3515d) Waste. No person being entitled to the enjoyment of water for any purpose shall use the same in excessive quantity or suffer the same to run to waste. And if any person using the water of any natural stream or other source of supply shall by reason of his omission to maintain and keep the banks or other appurtenances of the works whereby the same are diverted, conveyed, or stored, or other negligence whatsoever, knowingly suffer such water to run to waste, or apply or use the same in greater quantity than necessary for his purposes, he shall be liable to a fine in not less than five dollars and not exceeding three hundred dollars, in the discretion of the court wherein conviction shall be had. [Laws 1891, ch. 133, art. 8, § 6.]

(3515e) Diversion. If any person shall unlawfully raise the head-gate of any canal, ditch, conduit or reservoir for the diversion, conveyance, retention or storage of water for domestic, agricultural, or other industrial uses whatsoever; or shall unlawfully raise the gate of any outlet, lateral, or sub-lateral whereby such person is himself supplied with water; or shall close or lower the gate whereby any other person shall be supplied with water from any ditch, canal, conduit, reservoir, lateral or sub-lateral; or shall by any way or means whatsoever willfully and unlawfully prevent any other person or persons from receiving the supply of water to which he or they may be lawfully entitled; or shall willfully and maliciously cut or break down the head-

gate of any such ditch, conduit, or reservoir, or the gate of any feeder or lateral thereof; or shall willfully cut, excavate, throw down or open the embankment, side or other part of any such work, being the property of another, or in which any other person or persons may be joint owners with the person offending, or which may be in the possession of any other person or persons, with intent maliciously to injure any person, association, or corporation, or for his, her or their own gain, or with intent to unlawfully take or cause to run or pour out of such ditch, canal, conduit or lateral, flume, feeder, or reservoir, any water for his or their own use, profit, benefit, or advantage, or for the use, profit, benefit or advantage of any person or persons not entitled thereto, and to the injury of any other person or persons, association or corporation lawfully entitled to use such water, or to the injury of the proprietors of such ditch, conduit, reservoir, flume, feeder, or lateral, or other person interested therein, or shall break or injure or carry away any part or all of any bridge or viaduct constructed to, on, over or across any such canal, ditch, or other conduit, or shall oppose or interfere with any officer in the discharge of his duties under this act, or in anywise willfully and unlawfully obstruct the discharge of any such duty, he, she or they so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five dollars nor more than three hundred dollars, and may be imprisoned in the county jail not exceeding ninety days. [Laws 1891, ch. 133, art. 8, § 7.]

(3515f) **Diversion.** Any person so offending, after conviction thereof once had, shall be punished by fine in not less than twenty dollars and not exceeding one thousand dollars, or by imprisonment in the penitentiary for not exceeding one year, in the discretion of the court wherein such conviction shall be had. [Laws 1891, ch. 133, art. 8, § 8.]

(3515g) **Record.** If any person in charge of the work of sinking or boring an artesian well shall fail, neglect or refuse to keep a record thereof as required by this act, or shall fail, refuse

or neglect to set forth therein as nearly as may be any of the matters or things hereby required to be set down in such record ; or being the proprietor of such well hereafter sunk or bored, or proprietor of, or entitled to the waters of any such well heretofore sunk or bored, shall fail or refuse to make and record the certificate required by this act, or shall willfully and knowingly insert in such record or in such certificate any false statement touching any such matter, or shall cause or procure, or knowingly permit, suffer or connive at such omission or false statement ; or being the proprietor of, or controlling any artesian well, shall suffer the same to flow without causing it to be furnished with such appliances as hereby required for arresting and preventing the flow of water therefrom ; or who, being the proprietor of or controlling such well, shall knowingly permit the water thereof to flow to waste unnecessarily, and to the injury of others ; or, being in possession of or controlling the premises where such well is situated, shall willfully prevent any water bailiff, county commissioner, road overseer or city officer entitled by this act to visit and inspect the same from so doing, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court wherein conviction is had. [Laws 1891, ch. 133, art. 8, § 11.]

(3515h) Headgate. Any person, association or corporation, who, being the owner of or controlling any ditch, conduit, or other works for diverting water from any natural source, shall fail or neglect to construct therein such head-gate for excluding the water therefrom and regulating the flow therein, or such ratingflume or measuring device for rating or measuring the flow of water therein and determining the capacity thereof, as required by this act, or such waste-gate and tail-race when thereunto lawfully required in pursuance hereof, or to maintain any such structure in good repair and condition, or to renew and replace

the same whenever thereunto required, or to put and keep upon such head-gate a suitable keyed device or lock, or to deliver the key thereof to the proper officer upon demand, shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine of not less than ten dollars and not exceeding three hundred dollars, in the discretion of the court wherein conviction shall be had. [Laws 1891, ch. 133, art. 8, § 13.]

(3515₂) Officer. If the proprietors of any canal, ditch, conduit or other works for diverting the water of any natural source shall refuse or fail to erect at or near the head of such works the head-gate required by this act, or to maintain the same in good order as hereby required, the officer having authority so to do shall, whenever necessary in order to the distribution of the waters of the district in conformity with the statutes and the order of any court having jurisdiction, exclude the water of such stream from such ditch, conduit or other works by filling such ditch, conduit or other works at or near the head thereof, or by cutting the banks thereof, or in such other way as to him may seem effective, having due regard to the cost thereof; and the reasonable cost of such filling or other work shall be paid by the board of commissioners of the county wherein the head of such ditch, conduit or other works may be situate, and may, together with a reasonable attorney's fee to be fixed by the court, be recovered by such county in any court of competent jurisdiction. . . . Such proprietors so in default shall be liable for all injury and damages occasioned any consumer of water lawfully entitled thereto from such ditch, conduit, or other works, by the willful or negligent failure of such proprietors to comply with the provisions of this act; and if any person, without first constructing the head-gate therein as required by this act, shall open any such canal, ditch, conduit, or other works, after the same shall have been filled by the officer having authority to do so, or turn the water into such canal, ditch, conduit, or other works after the same shall have been excluded therefrom pursuant hereto, or having control of such works shall

knowingly permit water to flow therein after the same shall have been so closed or the water excluded therefrom as aforesaid, pursuant hereto, every person so offending shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months, or punished by both fine and imprisonment, in the discretion of the court wherein such conviction is had. [Laws 1891, ch. 133, art. 8, § 14.]

(3515j) Liability for Damages. Every person who shall, either as owner, agent, contractor or manager, build construct, operate or maintain any such dam or embankment, flume, aqueduct or other conduit, in such manner that by reason of the willful or negligent disregard by such person of the requirements of this act, or by his failure to use due caution, care and diligence in the building, construction, operation or maintenance thereof, any other person shall be injured, damaged, or put in jeopardy, either as to person or property, or both, shall be liable for all damages caused by or resulting from his willful or negligent conduct, and may upon conviction hereunder be punished by fine in any sum not less than twenty-five dollars nor more than five thousand dollars, or imprisonment not exceeding a term of three years in the penitentiary, or both such fine and imprisonment, in the discretion of the court wherein such conviction shall be had: *Provided*, That if loss of human life be caused or occasioned by any such willful or negligent conduct, the person so offending shall be amenable to all the laws and subject to all the penalties provided by the statutes of the state of Kansas in respect of unlawfully, maliciously, willfully or negligently causing the death of any person. [Laws 1891, ch. 133, art. 8, § 16.]

(3515k) Justice. In all cases declared misdemeanors by this act, where the punishment does not exceed a fine of three hundred dollars, or imprisonment in the county jail, the same may be prosecuted before any justice of the peace of the county wherein the offense was committed; and the accused person

shall be entitled to appeal from the judgment of the justice of the peace as provided in other criminal prosecutions. [Laws 1891, ch. 133, art. 8, § 22.]

(35157) Perjury. Any person guilty of willful false swearing to any statement as by this act required shall be deemed guilty of perjury, and punished accordingly. [Laws 1891, ch. 133, art. 8, § 23.]

CHAPTER 53.—JAILS.

(3534) Jail. § 1. There shall be established and kept at every county seat, by authority of the board of county commissioners, at the expense of the county, a jail, for the safe-keeping of prisoners lawfully committed. [G. S. 1868, ch. 53, § 1, Oct. 31.]

A county is not liable to the inmates of its county jail for negligently permitting such jail to become and remain in such a bad condition that the inmates thereof become sick and diseased. (*Pfefferle v. Lyon Co.*, 39 K. 433.)

The duty of keeping the county jail and supplying the prisoners committed thereto with board and lodging devolves upon the sheriff, and to him alone is the county liable for the same. (*Hendricks v. Chautauqua Co.*, 35 K. 483.)

It is the duty of the board of county commissioners to furnish a good and sufficient jail in their own county. [G. S. 1868, ch. 25, § 4; ch. 53, § 1.] (*Comm'rs Osborne Co. v. Honn*, 23 K. 256.)

(3535) Inspection. § 2. The judge of the district or criminal court, and the county attorney, shall, during each term of the district or criminal court, make personal inspection of the county jail, as to the sufficiency thereof for the safe-keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term, and make report, in writing, to the board of county commissioners of the county; and whenever any grand jury shall be in session in any county, it shall be the duty of such jury to make inspection and report to the county commissioners, touching the same matters; and it shall be the imperative duty of the county commissioners to issue the necessary

orders, or cause to be made the necessary purchases or repairs, in accordance with the recommendation of the grand jury. [G. S. 1868, ch. 53, § 2, Oct. 31.]

(3536) Kept by sheriff. § 3. The sheriff of the county, by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept. He shall keep separate rooms for the sexes, except where they are lawfully married. He shall supply proper bread, meat, drink and fuel for the prisoners. [G. S. 1868, ch. 53, § 3, Oct. 31.]

The duty of keeping the county jail and supplying the prisoners committed thereto with board and lodging devolves upon the sheriff, and to him alone is the county liable for the same. (*Hendricks v. Chautauqua Co.*, 35 K. 483.)

It is not the duty of the board of county commissioners of a county to furnish medical attendance for prisoners sent from another county. (*Smith Co. v. Osborne Co.*, 29 K. 72.)

A sheriff is not entitled, as a matter of right, to extra compensation, over and above the amount fixed by law, for boarding prisoners, although he may have to carry the provisions fifty rods and the water one hundred and sixty rods, and although the cells of the jail may be small and inconvenient, and although the weather may be cold and disagreeable. (*Atchison Co. v. Tomlinson*, 9 K. 167; *Republic Co. v. Kindt*, 16 K. 157.)

The sheriff, and not the deputy sheriff or jailer, is entitled to compensation for supplying prisoners in the county jail. (*Atchison Co. v. Tomlinson*, 9 K. 167.)

(3536) Calendar. § 4. The sheriff of each county must keep a true and exact calendar of all prisoners committed to the county jail, which calendar must contain the names of all persons who are committed, their place of abode, the time of their commitment, the time of their discharge, the cause of their commitment, the authority that committed them, and the description of their persons; and when any prisoner is liberated, such calendar must state the time when and the authority by which such liberation took place; and if any person escape, it must state particularly the time and manner of such escape. [G. S. 1868, ch. 53, § 4, Oct. 31.]

(3537) Copy. § 5. At the opening of each term of the district or criminal court within his county, the sheriff must return a copy of such calendar, under his hand, to the judge of

such court; and if any sheriff neglect or refuse so to do, he shall be punished by fine not exceeding five hundred dollars. [G. S. 1868, ch. 53, § 5, Oct. 31.]

(3539) Bible, etc. § 6. The sheriff of each county shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the Bible or New Testament, to be used by such prisoner at proper seasons during his confinement; and any minister of the gospel, desiring to aid in reforming the prisoners and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times. [G. S. 1868, ch. 53, § 6, Oct. 31.]

(3540) Liquor, etc. § 7. No sheriff, jailer or keeper of any prison shall, under any pretense, give, sell or deliver to any person committed to prison, for any cause whatever, any spirituous, vinous, or fermented or other intoxicating liquors, unless a physician shall certify, in writing, that the health of such prisoner requires it, in which case he may be allowed the quantity prescribed, and no more; and any sheriff, jailer or keeper of any county jail who shall violate the provisions of this section, or who shall willingly or negligently suffer any prisoner to have any liquor prohibited in this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, be fined not less than ten nor more than five hundred dollars. [G. S. 1868, ch. 53, § 7, Oct. 31.]

(3541) Penalty. § 8. If any person other than the persons mentioned in the preceding section shall sell or deliver to any person committed to jail, for any cause whatever, any liquor prohibited by the preceding section, or shall have in his possession, in the precincts of any prison, any such liquor, with the intent to carry or deliver the same to any prisoner confined therein, he shall upon conviction be punished by fine not exceeding twenty-five dollars. [G. S. 1868, ch. 53, § 8, Oct. 31.]

(3542) Costs. § 9. The cost of keeping a defendant, imprisoned by civil process shall be taxed as costs against the

plaintiff, at the rate of fifty cents per day; and if, on demand made, such plaintiff shall fail to pay the same, the defendant may be discharged, but such costs may afterwards be recovered against the defendant. [G. S. 1868, ch. 53, § 9, Oct. 31.]

(3543) Criminal case. § 10. When a prisoner is committed in a criminal action, the county board shall allow the sheriff his reasonable charges for supplying such prisoner. [G. S. 1868, ch. 53, § 10, Oct. 31.]

Under § 331 of the criminal code the board of county commissioners may allow a moderate compensation for medical services, fuel, bedding and menial attendance furnished for prisoners committed to the county jail, which shall be paid out of the county treasury; but the allowance of such claims is wholly discretionary with the county board, and the liability of the county for the same can only arise upon an order made by the county commissioners when duly convened and acting as a board. (*Hendricks v. Chautauqua Co.*, 35 K. 483.)

It is their duty to allow the sheriff his reasonable charges for supplying prisoners confined in the county jail (*Comm'r's Osborne Co. v. Honn*, 23, K. 256.)

Sec. 10 of the act concerning county jails [G. S. 531, ch. 53] does not repeal the other statutes fixing the fees of the sheriff for supplying prisoners. (*Atchison Co. v. Tomlinson*, 9 K. 175.)

(3544) Process and return. § 11. When a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with his return made thereon, which copy, duly certified by such sheriff, shall be presumptive evidence of his right to retain such prisoner in custody. [G. S. 1868, ch. 53, § 11, Oct. 31.]

(3545) Commitments. § 12. All instruments of every kind, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly indorsed and filed, and safely kept in a suitable box, by such sheriff or by his deputy, acting as jailer. [G. S. 1868, ch. 53, § 12, Oct. 31.]

(3546) Disposition. § 13. Such box, with its contents, shall be delivered to the successor of the officers having charge of the prisoner. [G. S. 1868, ch. 53, § 13, Oct. 31.]

(3547) Escape. § 14. If any prisoner, confined on civil process, shall violently escape from prison, without connivance

of the jailer, and such prisoner shall be recommitted to the prison whence he escaped, within three months after such escape, such a recommitment shall operate to bar any recovery against the sheriff for such escape, except for the costs of any action that shall have been previously commenced against him therefor. [G. S. 1868, ch. 53, § 14, Oct. 31.]

(3548) Judgment for escape. § 15. If judgment in any such action for escape shall have been rendered against the sheriff, before the expiration of three months, such recommitment of the prisoner, as mentioned in the next preceding section, shall operate as a satisfaction of all such judgments, except the costs. [G. S. 1868, ch. 53, § 15, Oct. 31.]

(3549) Sent to other county. § 16. Any committing magistrate, justice of the peace, or judge of the district court of any county in which there is no sufficient jail, may order any person whom they may lawfully order to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of the order of such judge or magistrate, which order shall have indorsed thereon a statement that there is no sufficient jail in the county from whence it issued, receive and keep in custody, in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which such person was sent; and the said sheriff shall, upon the order of the committing magistrate, or of the judge of the district court, re-deliver such person when demanded. [G. S. 1868, ch. 53, § 16, as amended by Laws 1876, ch. 85, § 1, May 1.]

(Comm'rs Osborne Co. v. Honn, 23 K. 256.)

(3550) Fugitive. § 17. Any county jail may be used for the safe-keeping of any fugitive from justice from another state or territory, and the jailer shall in such case be entitled to reasonable compensation for the support and custody of such fugitive from justice, to be paid by the officer demanding the custody of the same. [G. S. 1868, ch. 53, § 17, Oct. 31.]

(3551) United States prisoners. § 18. The sheriff or

the keeper of the jail in any county of the state shall be and is hereby authorized and required to receive all prisoners charged with crime committed to his custody by the authority of the United States, and to keep them safely until discharged by due course of the laws of the same; and if any sheriff or jailer shall neglect or refuse to perform the services and duties required of him by this section, or shall offend in the premises, he shall be liable to the like penalties, forfeitures and actions as if such prisoner or prisoners had been committed under the authority of this state: *Provided*, That every prisoner that shall be committed by the authority of the United States shall be supported at the expense of the United States during his or her confinement in such jail; and no greater compensation shall be charged by any sheriff or keeper of any jail for the subsistence of said United States prisoners than is authorized by law to be charged for the subsistence of state prisoners: *Provided, also*, That the county in the jail of which such prisoners shall be confined shall be entitled to receive from said United States the sum of one dollar per month for the use of such jail for each person so committed. Any such United States prisoner may be held on a commitment directed either to the United States marshal or the keeper of any county jail; and the attorney of prisoners shall be permitted to visit them professionally at all reasonable hours. [G. S. 1868, ch. 53, § 18, Oct. 31.]

(3552) Treatment. § 19. All prisoners shall be treated with humanity, and in a manner calculated to promote their reformation. Juvenile prisoners shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals. The visits of parents and friends who desire to exert a moral influence over them shall at all reasonable times be permitted. [G. S. 1868, ch. 53, § 19, Oct. 31.]

(3553) Cities. § 20. Whenever any person or persons shall be charged with the violation of any ordinance or ordinances of any city of the second or third class, or shall be found guilty of

having violated any ordinance or ordinances of any city of said second or third class within this state, they may be confined in the county jail of the county in which said city may be situated, in the same manner and to all intents and purposes the same as in the city jail, and the sheriff of any such county shall receive and treat the prisoners in the same manner as prisoners of the county; but the city shall be liable for the maintenance of such prisoners, at the same rates and upon the same terms as is provided for the maintenance of county and state prisoners; and the city council shall provide for the payment of such indebtedness upon receiving a statement from the sheriff of any such county as to the amount due therefor from such city. [Laws 1877, ch. 122, § 1, March 13.]

(3554) Construction. § 21. Nothing in this act shall be so construed as to compel any city of said second or third class having a city jail to confine their prisoners in the county jail, unless the council of such city deem it advisable so to do. [Laws 1877, ch. 122, § 2, March 13.]

CHAPTER 54.—JURORS.

(3566) List. § 1. The trustee of each organized township, and the mayor of any city not included in any corporate limits of any township, shall, at his office, during the month of April of each year, make a list of persons to serve as jurors for the ensuing year as hereinafter provided. [G. S. 1868, ch. 54, § 1, as amended by Laws 1876, ch. 104, § 1, March 10.]

(State v. Skinner, 34 K. 256; McCrum v. Corby, 15 K. 116; State v. Potter, 15 K. 302; Shellabarger v. Nafus, 15 K. 547; K. P. Rly. Co. v. Pointer, 14 K. 37; Stout v. Hyatt, 13 K. 232; Perry v. Bally, 12 K. 539; M. K. & T. Rly. Co. v. Munkers, 11 K. 223; Moore v. Cass, 10 K. 288; State v. Medlicott, 9 K. 257; Hairgrove v. Millington, 8 K. 480; Smith v. Brown, 8 K. 608; Pacific Rly. Co. v. Nash, 7 K. 280; Wiley v. Keokuk, 6 K. 94; Maduska v. Thomas, 6 K. 153; State v. Dickson, 6 K. 209; Graham v. Trimmer, 6 K. 230; Lewis v. State, 4 K. 296; Roy v. State, 2 K. 405; Madden v. State, 1 K. 341; Morton v. State, 1 K. 468.)

(3567) Selected. § 2. They shall select from those assessed on the assessment roll of the preceding year suitable persons having the qualifications of electors, and in making such selections they shall choose only those who are not exempt from serving on juries, and who are possessed of fair character and approved integrity, and in possession of their natural faculties, and not infirm or decrepit, and who are well informed and free from legal exceptions: *Provided*, That no person shall be selected as a juror who either in person or by any other means shall solicit his selection as such; and the trustee of each township and the mayor of each city shall each select at least one such person for each fifty inhabitants therein. [G. S. 1868, ch. 54, § 2, as amended by Laws 1876, ch. 104, § 2, March 10.]

(A. T. & S. F. Rld. Co. v. Davis, 34 K. 204; State v. Jenkins, 32 K. 477.)

(3568) Excluded. § 3. In making such selections, each person who shall have served as a juror in any capacity at any term of court during the year next preceding such selection shall be excluded from the list of jurors for the then ensuing year; and if any such persons shall be selected or drawn, it shall be the duty of the court to which such jurors shall be summoned to strike the names of such persons from the list of jurors; and it shall be good cause of challenge to any juror that such juror shall have served as a juror in any court of record during the year next preceding such election; and no juror called or summoned who shall have so served during such preceding year shall draw any pay for more than one day during the term of court to which he shall be so summoned; and a list of the persons so selected shall be, immediately after such selection, certified by the officers making such selection to the county clerk of such county. [G. S. 1868, ch. 54, § 3, as amended by Laws 1876, ch. 101, § 3, March 10.]

(3570) Duty of Clerk. § 6. On receiving such lists the county clerk shall file the same in his office, and shall write down the names contained therein on separate pieces of paper, of the same size and appearance as nearly as may be, and shall

fold up each of such pieces of paper so as to conceal the name thereon, and deposit them in a box to be kept by him for that purpose, to be labeled "Jury box." [G. S. 1868, ch. 54, § 6, Oct. 31.]

(3571) One year. § 7. The persons whose names shall be so returned shall serve as such jurors for one year, and until other persons are selected and lists of such persons returned and filed. [G. S. 1868, ch. 54, § 7, Oct. 31.]

(3572) County clerk. § 8. Upon the receipt of such certificates of selection of jurors, such county clerk shall destroy the papers in the jury box containing the names of jurors heretofore selected, and file such new lists and place in the jury box the names of the jurors so drawn, as provided in section six of this act. [G. S. 1868, ch. 54, § 8, as amended by Laws 1876, ch. 104, § 4, March 10.]

(3573) Jury drawn. § 9. At least thirty days before any term of the court at which a petit jury shall be required by law, or a grand jury ordered by the court, the clerk of the county where such court is to be held shall draw from the jury box the names of fifteen persons to serve as grand jurors and the names of twelve persons to serve as petit jurors. [G. S. 1868, ch. 54, § 9, Oct. 31.]

(3574) Notice. § 10. At least three days before the drawing of such jurors, the clerk shall give notice to the sheriff and two justices of the peace of said county of the day and hour when such drawing will take place. [G. S. 1868, ch. 54, § 10, Oct. 31.]

(State v. Yordl, 30 K. 221; State v. Bohan, 19 K. 28.)

(3575) Drawing. § 11. At the time so appointed it shall be the duty of the sheriff of the county, in person or by his under-sheriff and the justices aforesaid, to attend at the county clerk's office to witness such drawing, and if any two of said officers shall attend at the time and place appointed, the clerk shall proceed, in their presence, to draw the jurors. [G. S. 1868, ch. 54, § 11, Oct. 31.]

(3576) Adjourned. § 12. If two of the officers so notified do not appear, the clerk shall adjourn the drawing of such jurors until the next day, and shall by written notice require any justice of the peace of the county to attend such drawing on the adjourned day. [G. S. 1868, ch. 54, § 12, Oct. 31.]

(3577) Proceed. § 13. If at the adjourned day any two of the officers notified to attend the drawing of such jurors shall appear, but not otherwise, the clerk shall proceed, in the presence of the officers so appearing, to draw the jurors. [G. S. 1868, ch. 54, § 13, Oct. 31.]

(3578) How conducted. § 14. The clerk shall conduct such drawing as follows:

First, He shall shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names are written, as much as possible.

Second, He shall then publicly draw out of the box as many of said slips of paper containing such names as shall be required by law or specially ordered by such court.

Third, A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the name contained on every slip of paper so drawn before any other such slip shall be drawn.

Fourth, If, after the drawing the whole number required for grand or petit jurors, the name of any person shall appear to have been drawn who is dead, or become insane, or who has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing such name shall be destroyed.

Fifth, Another name shall then be drawn, in place of that contained on the slip of paper so destroyed, which shall in like manner be entered in the minutes of the drawing.

Sixth, The same proceedings shall be had as often as may be necessary, until the whole number of jurors required shall have been drawn.

Seventh, The minute of the drawing shall then be signed by the clerk and the attending officers, and filed in the clerk's office.

Eighth, Separate lists of the names of the persons so drawn for petit jurors and of those drawn for grand jurors, with their places of residence, and specifying for what court they were drawn, shall be made and certified by the clerk and the attending officers, and delivered to the sheriff of the county. [G. S. 1868, ch. 54, § 14, Oct. 31.]

(State v. McKinney, 31 K. 570.)

(3579) Summon jurors. § 15. The sheriff shall summons the persons named in such lists, respectively, to attend such court, at least six days previous to the sitting thereof, by giving personal notice to each person, or by leaving a written notice at his place of residence with some person of proper age, and shall return such lists to the court at the opening thereof, specifying the names of those who were summoned and the manner in which each person was notified. [G. S. 1868, ch. 54, § 15, Oct. 31.]

(3580) Copy. § 16. It shall be the duty of the county clerk to furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the lists of jurors drawn to attend any court. [G. S. 1868, ch. 54, § 16, Oct. 31.]

(3581) Fine. § 17. The court to which any list of jurors shall be returned by the sheriff shall impose a fine not exceeding twenty dollars for each day that any person duly summoned as a juror shall without reasonable cause neglect to attend; but if it appear by such return that any person was notified by leaving a written notice at his place of residence, the court shall suspend the imposition of such fine until the defaulting juror shall be notified to appear and show cause why the same should not be imposed. [G. S. 1868, ch. 54, § 17, Oct. 31.]

(3582) Exempt. § 18. The following persons shall be exempt from serving as jurors, to wit: All persons holding office under the laws of the United States or this state, attorneys and counselors at law, physicians, ministers of the gospel, professors.

and teachers of colleges, schools, and other institutions of learning, ferrymen, all members of any company of firemen organized according to law, all persons more than sixty years of age, and all other persons exempted by any other law of this state from serving on juries. [G. S. 1868, ch. 54, § 18, Oct. 31.]

(3583) Excused. § 19. Any person may also be excused from serving on a jury when it shall appear to the court that the interests of such juror or those of the public will be materially injured by his attendance, or when the state of his own health or that of any member of his family requires his absence. [G. S. 1868, ch. 54, § 19, Oct. 31.]

(3584) Ballots. § 20. After the adjournment of any court, at which any jurors shall have been returned as herein provided, the clerk shall inclose the ballots containing the names of those who attended and served as jurors, in an envelope, under seal, or deposit the same in a separate box; and the ballots containing the names of those who did not appear and serve as jurors which shall not have been destroyed shall be returned to the box from which they were taken. [G. S. 1868, ch. 54, § 20, Oct. 31.]

(3585) Additional. § 21. Whenever, in the opinion of the judge of any district court, more than twelve petit jurors shall be necessary to attend any such district court, he may, by an order under his hand, direct such additional number of jurors as he shall deem necessary, not exceeding twenty-four, to be drawn. [G. S. 1868, ch. 54, § 21, Oct. 31.]

(3586) Orders. § 22. Such order shall be served on and filed with the clerk of the county in which such court is to be held, at least thirty days previous to the day appointed for the commencement thereof, and the said clerk shall thereupon draw the number specified in such order, in addition to the number otherwise required by law, and shall proceed therein in all respects in the same manner herein prescribed. [G. S. 1868, ch. 54, § 22, Oct. 31.]

(3587) Additional. § 23. Whenever, for any cause, petit

jurors shall not have been drawn and summoned to attend any court of record, or a sufficient number of qualified jurors shall not be in attendance at such court, the court shall order a sufficient number to be immediately drawn and summoned as herein provided. [G. S. 1868, ch. 54, § 23, as amended by Laws 1876, ch. 104, § 5, March 10.]

(State v. Allen, 5 K. 213; Trembly v. State, 20 K. 116; State v. Skinner, 34 K. 256; State v. Taylor, 36 K. 329.)

(3588) Bystanders. § 26. When there shall not be jurors enough present to form a panel in any cause, the court may direct the sheriff or other officer to summon a sufficient number of persons having the qualifications of jurors to complete such panel from the bystanders or from among the neighboring citizens, and the officer shall summon the number so ordered: *Provided*, That in case either party to such cause, by himself or his attorney, shall so request it, it shall be the duty of the judge of such court to select such jurors and cause a venire to issue for the same, naming the jurors so selected therein as hereinbefore provided. [G. S. 1868, ch. 54, § 26, as amended by Laws 1876, ch. 104, § 6, March 10.]

(State v. Copp, 34 K. 522; Trembly v. State, 20 K. 116.)

(3589) Neglect to attend. § 27. Every person summoned pursuant to the provisions of the last three sections shall attend forthwith and serve as a juror, unless excused by the court; and for every neglect or refusal so to attend, shall be subject to a fine in the same manner as jurors regularly drawn and summoned, as hereinbefore provided. [G. S. 1868, ch. 54, § 27, Oct. 31.]

(3590) Compensation. § 28. The officers attending the drawing of jurors, under the provisions of this act, shall each be entitled to receive for their services the sum of two dollars per day for drawing said jurors, to be audited and paid as accounts against the county. [G. S. 1868, ch. 54, § 28, Oct. 31.]

(3591) Seeking to become. § 29. If any person shall ask, procure, or offer to procure, for himself or for another person, a place upon any jury, or shall seek to have himself or

another placed upon the list of jurors as by this act provided, he shall be deemed guilty of a misdemeanor, and fined not less than five dollars for each offense. [Laws 1876, ch. 104, § 7, March 10.]

(3593) Duty of judge. § 31. That in all cases where any county may have been organized or shall hereafter be organized, and in which the terms of the district court may have been or shall hereafter be established, where no list of jurors shall have been prepared in accordance with the provisions of an act entitled "An act providing for the selection and summoning of grand and petit jurors," and the amendments thereto, being chapter fifty-four of the compiled statutes of Kansas, it shall be the duty of the judge of said district, at least forty days before any term of the court at which a petit jury shall be required by law or a grand jury ordered by the court, to order in writing the several trustees of the county to select a list of persons to serve as jurors for the ensuing year. Such order, when made, shall be by the clerk of the court entered upon the journal of the court; and when so entered upon the journal, it shall be the duty of the clerk to deliver to the sheriff a certified copy of such order. It shall be the duty of the sheriff, upon receiving such order, to forthwith serve the same upon the several trustees of the county. The sheriff shall make the return of such order, showing the manner in which he has executed the same. Upon being served with a copy of such order, it shall be the duty of each of the trustees so served to proceed at once to select from their respective townships a list of persons qualified to serve as such jurors, and shall within ten days from the date of service of such order return to the county clerk of the county a list of the names so selected. Twenty days before the convening of the court, it shall be the duty of the sheriff and two justices of the peace of the county to draw from the names so selected such a number of names of persons to serve as jurors as may be ordered by the court. Such trustees in the selection of names and return of the same, and the county clerk, sheriff

and justices of the peace in drawing a jury from the names so selected, shall be governed by the statutes now in force governing the selection of juries. Any jury so selected shall be held to be regularly drawn. [Laws 1886, ch. 116, § 1, Feb. 26.]

(3594) Failure to make lists. § 32. That whenever it shall be made to appear to the court that the township trustees and mayors of cities, as provided for in the act to which this is an amendment, have failed to make the lists from the assessment rolls of the previous year, or that from any other cause the lists furnished by them to the county clerk, or the names taken therefrom and deposited in the jury box have been so returned or deposited as to vitiate a panel drawn therefrom, it shall be the duty of the judge of such court to forthwith select a sufficient number of jurors for the term, and cause a venire to issue for the same, naming the jurors so selected therein. [Laws 1886, ch. 117, § 1, Feb. 27.]

(3595) Judge to issue order. § 33. That whenever it shall be made to appear to the court that from any cause the lists made out by the township trustees and mayors of cities and deposited with the county clerk, and the names taken therefrom and deposited in the jury box, have been so made out and returned or so deposited as to vitiate the panel, it shall be the duty of the judge of such court to issue his order to said trustees and mayors of cities to meet at the office of the county clerk on a day in said order named, and then and there to make out a list of persons to serve as jurors for the balance of the ensuing year, as in said act to which this is an amendment provided. [Laws 1886, ch. 117, § 2, Feb. 27.]

(3596) Lists. § 34. That upon the completion and certification of said lists by said township trustees and mayors of cities, they shall be delivered to the county clerk, who shall file the same in his office, and proceed to write down the names contained in such lists in the same manner as though such lists had been certified to and deposited with him at the time fixed by law. [Laws 1886, ch. 117, § 3, Feb. 27.]

(3597) County clerk. § 35. That upon the receipt of such certified lists of jurors, such county clerk shall destroy the papers in the jury box containing the names of jurors heretofore selected, and place in the jury box the names of the jurors so drawn under the order of the judge. [Laws 1886, ch. 117, § 4, Feb. 27.]

(3598) Governor to appoint commissioners. § 36. That in each organized county in this state having a population of thirty thousand and upwards there shall be appointed by the governor three jury commissioners, not more than two of whom shall belong to the same political party, whose terms of office shall be for two years and until their successors are appointed and qualified. Said commissioners shall be qualified electors of their respective counties, and any two of them shall constitute a quorum for the transaction of their duties. [Laws 1887, ch. 166, § 1, March 12.]

(3599) Appointed. § 37. Said jury commissioners shall be appointed by the governor on or before the first day of April in the year 1887, and every two years thereafter; and in case of vacancy by death, resignation or otherwise, said governor shall appoint a successor to fill said offices for the unexpired term. Each of said commissioners shall, before entering upon the discharge of his duties, subscribe to and take an oath to support the constitution of the United States, the constitution of the state of Kansas, and faithfully discharge the duties of his office. [Laws 1887, ch. 166, § 2, March 12.]

(3600) Make lists. § 38. Said jury commissioners shall, at the office of the county clerk of his county, between the first and fifteenth day of April in each year, make a list of persons to serve as jurors for the ensuing year. [Laws 1887, ch. 166, § 3, March 12.]

(3601) Commissioners shall select. § 39. That said commissioners shall select from those assessed on the assessment rolls of the several townships and cities of the preceding year, suitable persons having qualifications of electors, and in making such selection they shall choose only those who are not exempt

from serving on juries, and who are possessed of fair character and approved integrity, and in possession of their natural faculties, and not infirm or decrepit, and who are well informed and free from legal exceptions. No person shall be selected as a juror who either in person or by any other means shall solicit his selection as such; and in making such selection the said commissioners shall select one person for each fifty inhabitants in said county, and such selections shall be made without regard to city or township limits, from the whole body of the county. [Laws 1887, ch. 166, § 4, March 12.]

(3602) Persons excluded. § 40. That in making such selection, each person who shall have served as a juror in any capacity at any term of court during the year next preceding such selection shall be excluded from the list of jurors for the then ensuing year; and if any such person shall be selected or drawn, it shall be the duty of the court to which such jurors shall be summoned to strike the names of such persons from the list of jurors; and it shall be good cause of challenge to any juror, that any juror shall have served as a juror in any court of record during the year next preceding such selection; and no juror called or summoned who shall have so served during such preceding year shall draw any pay for more than one day during the term of court to which he shall be so summoned; and a list of the persons so selected shall be, immediately after such selection, certified by the commissioners making such selection to the county clerk of such county. [Laws 1887, ch. 166, § 5, March 12.]

(3603) Duty of county clerk. § 41. That upon the receipt of such certificate of selection of jurors, such county clerk shall destroy the papers in the jury box containing the names of jurors heretofore selected, and file such new lists, and place in the jury box the names of the jurors so drawn, as provided in this act. [Laws 1887, ch. 166, § 6, March 12.]

(3604) Grand and petit jurors to be drawn. § 42. That from the lists so made and certified by the said jury commis-

sioners, all grand and petit jurors of the county shall be drawn and summoned as now provided by law. [Laws 1887, ch. 166, § 7, March 12.]

(3605) Commissioners shall be paid, how. § 43. That the said jury commissioners shall be paid out of the county treasury of said county three dollars for each day actually and necessarily employed in the duties of said office. [Laws 1887, ch. 166, § 8, March 12.]

(3606) Vitiate panel. § 44. That whenever it shall be made to appear to the court that from any cause the lists made out by said jury commissioners and deposited with the county clerk and the names taken therefrom and deposited in the jury box have been so made out and returned or so deposited as to vitiate the panel, it shall be the duty of the judge of such court to issue his order to said jury commissioners to proceed forthwith to the office of the county clerk of said county and then and there to make out immediately from the assessment roll of cities and townships, as provided in this act, lists of jurors to serve as jurors for the balance of the ensuing year. [Laws 1887, ch. 166, § 9, March 12.]

(3607) When lists are complete, to be certified. § 45. That upon the completion and certification of said lists by said jury commissioners they shall be forthwith delivered to the county clerk, who shall file the same in his office and proceed without delay to write down the names contained in such lists in the same manner as though such lists had been certified to and deposited with him at the time fixed by law. [Laws 1887, ch. 166, § 10, March 12.]

(3608) Duty of county clerk. § 46. That upon the receipt of such certified lists of jurors such county clerk shall forthwith destroy the papers in the jury box containing the names of the jurors heretofore selected, and place in the jury box the names of the jurors so drawn under the order of the judge, and from such box shall be drawn all juries for the balance of the ensuing year. [Laws 1887, ch. 166, § 11, March 12.]

(3609) Number of inhabitants. § 47. For the purposes of this act the number of inhabitants in any county shall be ascertained from the last enumeration of persons residing in the respective townships and cities of said county made by the several township and city assessors in said county. [Laws 1887, ch. 166, § 12, March 12.]

CHAPTER 61.—MARRIAGE.

(3739) Forbidden. § 2. All marriages between parents and children, including grandparents and grandchildren of any degree, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, and first cousins, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations. [Laws 1867, ch. 84, § 2, May 27.]

(3740) Penalty. § 3. Whoever shall contract marriage in fact, contrary to the provisions of the preceding section, and whoever shall issue any license for or solemnize any such marriage knowingly, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, at the discretion of the jury which shall try the cause; or if the conviction be by confession, at the discretion of the court; the fine to be not more than one thousand nor less than one hundred dollars, and imprisonment not less than three months nor more than five years. [Laws 1867, ch. 84, § 3, May 27.]

(3744) Neglect. § 7. If any probate judge shall refuse or neglect to issue any marriage license to any person legally entitled thereto on applying for the same, or who shall neglect to record a copy of such license on the return indorsed thereon within thirty days after such return, he shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding

one thousand dollars, to be recovered with costs for the use of the county. [Laws 1867, ch. 84, § 7, May 27.]

(3749) Living as. § 12. That any persons living together as man and wife within this state without being married shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than five hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than thirty days nor more than three months. [Laws 1867, ch. 84, § 12, May 27.]

(State v. Walker, 36 K. 297.)

CHAPTER 63.—MEDICAL SCIENCE.

(3758) Body of criminal. § 1. It shall be lawful for professors and teachers in medical colleges and schools in this state, or, where such colleges or schools do not exist, for any medical and surgical association, or regular physician or surgeon, to claim and receive any person executed pursuant to sentence of law, all persons dying in hospitals, and all persons dying in the penitentiary, while under sentence of law for crime, to be used for the purpose of medical and surgical study; and when such claim is made by said professors or teachers to the authorities having such body in charge, it shall be delivered to them forthwith for the aforesaid purposes: *Provided*, That said body or remains shall not have been regularly interred and shall not have been claimed for interment by any relation or personal friends of said deceased person within twenty-four hours after death: *Provided, also*, That the remains of no person who may be known to have relatives or friends, shall be delivered or received without the consent of said relatives or friends: *And provided*, That the remains of any person who shall have expressed a desire in his or her last sickness, that his or her body may be interred, shall not be delivered or claimed as aforesaid, but shall be buried in the usual manner: *And provided, also*, That in case the remains

of any person so delivered or received shall be subsequently claimed by any surviving relative or friend, they shall be given up to such relative or friend for interment; and it shall be the duty of said professors and teachers decently to bury, in some public cemetery, the remains of all bodies after they shall have answered the purposes of study as aforesaid; and for any neglect or violation of the provisions of this act, the parties so violating shall forfeit and pay a penalty of not less than one hundred dollars nor more than two hundred dollars. [Laws 1861, ch. 77, § 1, Sept. 2.]

(3759) Penalty. § 2. The remains of bodies of such persons as may be so claimed and received by the professors and teachers as aforesaid shall be used for the purpose of medical and surgical study alone, and in this state only, and whoever shall use such remains for any other purposes, or shall remove such remains beyond the limits of the state, shall be deemed guilty of a misdemeanor, and shall on conviction be imprisoned for a term not exceeding one year, in the county jail. [Laws 1861, ch. 77, § 2, Sept. 2.]

(3760) Misdemeanor. § 3. Every person who shall deliver up the remains of any deceased person in violation of or contrary to any provisions contained in the first section of this act, and any person who shall receive said remains, knowing the same to have been delivered contrary to any of the provisions of said section, shall each and every of them be deemed guilty of a misdemeanor. [Laws 1861, ch. 77, § 3, Sept. 2.]

CHAPTER 64.—MILITIA.

(3773) Penalty. § 12. Whoever shall secrete, sell, dispose of, or offer for sale, or in any manner pawn or pledge, or retain, or refuse to deliver to an officer entitled to take possession thereof, any uniform, arms, or equipments, or other state property which

shall have been procured under the provisions of this act, and any member of the Kansas National Guard who shall, when not on duty, wear any such uniform or equipments without the permission of his commanding officer, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not less than ten nor more thirty days, or by a fine of not less than ten dollars nor more than one hundred dollars. [Laws 1885, ch. 142, § 12, May 1.]

(3783) Process. § 22. The president of a court-martial may issue subpoenas, enforce the attendance of a witness, and punish a refusal to be sworn, or to answer, as provided in civil actions. [Laws 1885, ch. 142, § 22, May 1.]

(3784) Discipline. § 23. Commandants of companies or batteries may appoint courts of discipline, under rules and regulations prescribed by the state military board, for the trial of members of their respective companies or batteries for violations of the militia law, the general code of regulations, or the authorized by-laws of their companies or batteries. [Laws 1885, ch. 142, § 23, May 1.]

(3785) Fines. § 24. When fines assessed by courts-martial or courts of discipline are not paid within ten days after the sentence is approved by the reviewing officer and returned to the commandant, a list thereof and of the delinquents shall be placed in the hands of justices of the peace within the townships in which the delinquents respectively reside, who shall thereupon render judgment against such delinquents, separately, together with the costs of suit, without issuing process, and shall issue execution thereon, without stay, directed to any constable of the proper township, who shall collect the same without exemption. [Laws 1885, ch. 142, § 24, May 1.]

(3787) Prosecutions. § 26. In all criminal prosecutions for violations of the provisions of this act, fines and penalties collected by justices of the peace, as hereinbefore provided, shall be paid into the treasury of the proper county, and applied to the support of the common schools. [Laws 1885, ch. 142, § 26, May 1.]

(3790) Breach of peace. § 29. In case of any breach of the peace, tumult, riot, or resistance to process in this state, or imminent danger thereof, it shall be lawful for the sheriff of any county or the mayor of any city to call for aid upon the commanding officer of any regiment, battalion, or company; and it shall be the duty of the said commanding officer upon whom such call is made, to order out in aid of the civil authorities the military force, or any part thereof under his command, reporting immediately what he has done, and all the circumstances attending the same, to his immediate commanding officer, and also to the commander-in-chief. [Laws 1885, ch. 142, § 29, May 1.]

(3791) Subject to order of sheriff. § 30. Such commanding officer shall be subject, as provided by law, to the sheriff or public officer who shall require his aid; and for refusing or neglecting to obey the lawful order of such sheriff, or public officer requiring such service, or for interfering or in any way hindering or preventing the men of his command from performing such duty, or in any manner by neglect or delay preventing the due execution of the law, every such commanding officer, and every commissioned officer under his command so offending, shall be liable to a fine of one hundred dollars and imprisonment in the county jail for a period of not exceeding six months. [Laws 1885, ch. 142, § 30, May 1.]

(3792) Penalty. § 31. Any non-commissioned officer, musician or private who shall neglect or refuse to obey the orders of his commanding officer, in case of invasion, insurrection, riot, tumult, breach of the peace, or resistance to process hereinbefore provided for, shall be liable to a fine of not less than twenty nor more than one hundred dollars, and imprisonment in the county jail for a period not exceeding three months. [Laws 1885, ch. 142, § 31, May 1.]

CHAPTER 65.—MILLS AND MILLERS.

(3811) Penalty. § 8. That if any owner or occupier of any mill, or their representatives, agent, or miller, shall violate any of the provisions of this act, they shall, after due conviction thereof before any court having jurisdiction of the same, be fined for every such offense in a sum not exceeding twenty dollars, at the discretion of the court, with costs for prosecution; said fine to be paid, one-fourth to the party aggrieved, and the balance into the fund for common schools; and moreover be liable, at the suit of the party, for damages. [Laws 1863, ch. 39, § 8, June 1.]

CHAPTER 66A.—MINES AND MINING.

(3832) Penalty. § 3. Any owner or owners or lessee of any coal mine or colliery, who shall neglect or refuse to comply with sections one and two of this act, shall be deemed guilty of a misdemeanor, and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment. [Laws 1875, ch. 115, § 3, May 15.]

(3833) Obstructions, etc. § 4. Any miner, workman or other person who shall knowingly obstruct or throw open any airways, or carry lighted lamps into places that are worked by the light of safety lamps, or shall move or disturb any part of the machinery of the hoisting engine, or whim, or open a door in the mine and not have the same closed again, whereby danger is produced either to the mine or those at work therein, or who shall enter into any part of the mine against caution, or who shall disobey any order given in pursuance of this act, or who shall do any willful act whereby the lives and health of persons working in the mine, or the security of the mine or mi-

ners or the machinery thereof, is endangered, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, at the discretion of the court. [Laws 1875, ch. 115, § 4, May 15.]

(3839) Ingress and egress. § 10. It shall be the duty of every person or corporation owning coal mines, and every person in charge of the same, to provide the county surveyor with all the ordinary means of ingress and egress, to make any survey thereof he may be ordered to make; and any person or persons in any way interfering, molesting or hindering such county surveyor in making any survey he may be ordered to make under the provisions of this act, shall be guilty of a misdemeanor, and shall be liable for each offense to a fine of not less than ten dollars and not more than one hundred dollars, to be prosecuted and recovered as in other cases of misdemeanor. [Laws 1877, ch. 127, § 5, March 15.]

(3845) Persons refusing. If any person shall refuse, hinder or prevent said county surveyor, or his deputy and assistants, from entering said shaft or shafts or drifts to make the survey so ordered by the justice of the peace, said person or persons so offending shall on conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term of not exceeding one year, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

(3860) Penalty. § 31. Any owner or owners, lessee, agent or operator of any coal mine who shall neglect or refuse to comply with sections one, two, three, four, five, six and eight of this act shall be deemed guilty of a misdemeanor, and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not more than three months, or by both such fine and imprisonment. All penalties recovered under this act shall be applied, in the county in which the fine is collected, to the support of common schools. [Laws 1883, ch. 117, § 16, as amended by Laws 1885, ch. 143, § 5, March 13.]

(3861) Minors. § 32. No person under twelve years of age shall be allowed to work in any coal mine, nor any minor between the ages of twelve and sixteen years unless he can read and write and furnish a certificate from a school teacher, which shall be kept on file, showing that he has attended school at least three months during the year; and in all cases of minors applying for work, the agent of such coal mine shall see that the provisions of this section are not violated; and upon conviction of a willful violation of this section of this act, the agent of such coal mine shall be fined in any sum not to exceed fifty dollars for each and every offense. [Laws 1883, ch. 117, § 17, Feb. 28.]

(3864) Shall employ shot firers. § 35. All owners, lessees, operators of, or any other persons having the control or management of any coal shaft, slope, drift or pit in this state, employing miners to work therein, shall employ shot firers to fire the shots therein. Said shots shall be fired once a day on each day when any such shaft, slope, drift or pit is in operation, but shall not be fired until after all miners and other employes working therein shall have been hoisted out of said mine. [Laws 1889, ch. 172, § 1, March 1.]

(3865) Unlawful for. § 36. It shall be unlawful for any miner or any other person other than the shot firers provided for in section one of this act to fire any shot in any coal shaft, slope, drift or pit in this state. Any miner or other person engaged in mining coal in this state who shall drill any hole or fire any shot in the coal vein at the working-face of any room or entry until so much of said coal vein at said working-face as the said shot or shots are intended to throw down shall have been undermined to the depth of not less than two feet, or sheared or cut to the full depth of the drill or shot hole and of the full thickness of the coal vein in rooms, or shall have been sheared to the full depth of the drill or shot hole and the full thickness of vein in entries, or who shall so direct the drilling of such holes as to include between such shearing or mining

an the back or rear end of the hole a greater width of coal than is contained between such shearing or mining and the mouth of the hole, shall be deemed guilty of a misdemeanor, and fined as hereinafter provided. [Laws 1889, ch.172, § 2, March 1.]

(3866) Misdemeanor. § 37. Any owner, lessee, operator or other person having the control or management of any coal shaft, slope, drift or pit, who shall refuse to furnish the shot firers as provided for in section one of this act, shall be deemed guilty of a misdemeanor, and on conviction therefor shall be fined in any sum not less than fifty nor more than two hundred dollars for each offense, or imprisonment in the county jail in the county where such offense is committed for a period not to exceed thirty days, or by both such fine and imprisonment; proceedings to be instituted in any court having competent jurisdiction. [Laws 1889, ch.172, § 3, March 1.]

(3867) Penalty. § 38. Any miner or other person who shall fire any shot in violation of section two of this act shall be deemed guilty of a misdemeanor, and on conviction therefor shall be fined in any sum not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail in the county where such offense is committed not to exceed thirty days, or by both such fine and imprisonment; proceedings to be instituted in any court having competent jurisdiction. [Laws 1889, ch.172, § 4, March 1.]

(3867a) Powder. It shall be unlawful for any miner or other person to take into or have in his possession in any coal-mine shaft, slope or pit in this state more than twelve and one-half ($12\frac{1}{2}$) pounds of powder or any other explosive substance at any one time; and all such powder or other explosive substance shall be kept in a tight box securely locked, and such boxes shall be kept at least twenty yards from the working-face in all such coal-mine slopes, drifts, or pits; and it shall be the duty of all pit-bosses or other persons who shall be in charge and control of any coal-mine slope, drift or pit in this state, to

keep watch over and see that the provisions of this act are complied with; and any person violating or neglecting to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and shall on conviction before any court having jurisdiction thereof be fined in any sum not less than ten nor more than fifty dollars, or by imprisonment in the county jail not more than thirty days for each and every such offense; and the possession of more than twelve and one-half pounds of powder, or any other explosive substance, in such coal-mine slope or drift, shall be *prima facie* evidence of the person taking said powder, or other explosive substance, into such mine, slope, or drift. [Laws 1891, ch.147, § 1.]

(3867b) Carelessness. Any miner, workman, or other person, who shall intentionally injure any safety lamp, instrument, airway, brattice, or obstruct or throw open airways, or carry lighted lamps, pipes, or matches into places worked by the light of safety lamps, or shall move or disturb any part of the machinery, or who shall open a door and not close it again, or enter any place of the mine against caution, or disobey any order given in carrying out the provisions of this act, or who shall do any willful act whereby the lives or health of persons or the security of the mine or the machinery is endangered, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine or imprisonment, at the discretion of the court. [Laws 1891, ch.147, § 2.]

CHAPTER 68.—MORTGAGES.

(3900) Shall not remove. § 8*h*. That it shall be unlawful for any person to remove any building, outhouse or shed off and from any real property upon which there is an unsatisfied mortgage properly recorded in the office of the register of deeds in the county where such real property is situate, without first obtaining from the mortgagee, his agent or assign, written permission for such removal. [Laws 1889, ch. 177, § 1, March 6.]

(3901) Building, the removal of. § 8i. That the removal of any building, outhouse or shed from any real property upon which there is an unsatisfied mortgage properly recorded as mentioned in the first section of this act, shall not destroy the lien of such mortgage upon such removed property, and it shall be the duty of the court, in any action brought to foreclose any mortgage where it is shown that the property from which said building, outhouse or shed has been removed is insufficient to satisfy such mortgage, to decree the sale of said building, outhouse or shed, wherever the same may be located, in satisfaction of such mortgage, provided that the land from which said building, outhouse or shed was removed shall be first sold. [Laws 1889, ch. 177, § 2, March 6.]

(3902) Penalty. § 8j. Any person convicted of a violation of the first section of this act shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail not less than two months nor more than six months. [Laws 1889, ch. 177, § 3, March 6.]

CHAPTER 72A.—OILS.

(3948) Oath and bond; duties. § 2. Every inspector, before entering upon the duties of his office, shall take the usual oath of office to faithfully discharge the duties of inspector. He shall also execute a bond to the state of Kansas, in such sum and with such security as shall be approved by the probate court of the county where appointed, conditioned for the faithful performance of the duties imposed on him by this act, which bond shall be for the use of all parties or persons aggrieved by the acts or neglects of such inspector. And all such persons may sue and recover upon such bond all damage they may have sustained by reason of any breach of duty or of the conditions of such bond. When called upon by any manufacturer, refiner, producer, dealer or purchaser of such oils, or by any officer

mentioned in section five of this act, to test such oils, the said inspector shall do so with all reasonable dispatch, by applying the fire test, as indicated and determined by J. Tagliabur's pyrometer, or some other instrument equally accurate, with which he shall have provided himself, at his own expense, at a temperature less than one hundred and ten degrees Fahrenheit. The inspector shall mark plainly and indelibly on such cask, barrel, or package, "Approved, fire test being one hundred and ten," together with his name and title of office; but if said oils will ignite at a temperature less than one hundred and ten degrees Fahrenheit, as aforesaid, then the inspector shall mark on each cask, barrel or package, "Condemned for illuminating purposes, fire test being one hundred and ten," together with his name and title of office. Said inspector, while in office, shall not buy, sell, bargain or trade, directly or indirectly, in any of the said oils. He may appoint deputies, for whom he shall be responsible, and who shall perform the duties of inspector. He shall keep an intelligible record of each inspection, made within twenty-four hours thereafter, in a book prepared for the purpose, which shall be open to all parties interested. Any inspector found guilty of fraud, deceit or culpable negligence in the performance of any of his duties as prescribed in this section, on conviction shall be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one month, or both, at the discretion of the court. [Laws 1879, ch. 125, § 2, March 18.]

(3944) Penalty. § 3. Any manufacturer, refiner, producer or dealer who shall neglect to give notice to said inspector of any such oil in his possession not already inspected by any authorized inspector of the state of Kansas, within two days after the same shall have been made, refined, possessed, or purchased, shall be liable to the same penalties provided in section two of this act against inspectors. [Laws 1879, ch. 125, § 3, March 18.]

(3945) Punishment for selling, etc. § 4. Any person, whether manufacturer, refiner, producer or dealer, who shall sell, or offer to sell, to any person in this state, any of said oils for

illuminating, whether manufactured, refined or produced in this state or not, which shall be below the approved standard — that is, having an igniting point less than one hundred and ten degrees Fahrenheit, as indicated and determined in the manner described in section two of this act, or before having the same inspected as herein provided; or if any manufacturer, refiner, producer, dealer or inspector of said oils shall falsely brand the package, cask or barrel containing the same, as provided in section two of this act, or procure the same to be done, or shall use barrels, packages or casks having inspector's brands thereon, and the oil therein not having been inspected, he or they so offending upon conviction thereof shall be liable to the same penalties provided in section two of this act against inspectors. The casks, barrels or packages containing the same shall be forfeited, and may be sold by any sheriff at public sale after giving ten days' notice as provided by law for notices of sales of personal property on execution, one-half of the proceeds of such sale to go to the school fund of the county and the other half to the informer; and further, shall be liable to any person or persons for all damages sustained in consequence of the explosion or ignition of such oil thus unlawfully kept and sold. [Laws 1879, ch. 125, § 4, March 18.]

(3946) Prosecutor. § 5. The mayor, marshal and policemen of any city, and all peace officers of any county in which an inspector is appointed in conformity with section one of this act, or any one of said officers within his respective city or county, shall cause all persons violating any of the provisions of this act to be prosecuted therefor. [Laws 1879, ch. 125, § 5, March 18.]

(3947) Court. § 6. All prosecutions contemplated by this act may be had in any court of competent jurisdiction. [Laws 1879, ch. 125, § 6, March 18.]

(3948) Shall be inspected. § 7. All minerals or petroleum oil, or any oil, fluid or substance which is a product of petroleum, or into which petroleum or any product of petroleum

enters or is found as a constituent element, whether manufactured in the state or not, shall be inspected as provided in this act before being offered for sale for consumption for illuminating purposes in the state. [Laws 1889, ch. 180, § 1, May 25.]

(3954) Misdemeanor. § 13. Any person or persons, whether vendor, manufacturer, or dealer, who shall sell or attempt to sell to any person in this state any of the illuminating oils hereinbefore mentioned before having the same inspected as provided in this act, shall be deemed guilty of a misdemeanor, and shall be subject to a penalty in any sum not exceeding five hundred (500) dollars; and if any manufacturer, vendor or dealer in any of said illuminating oils shall falsely brand the package, barrel or cask containing the same, for the purpose of deceiving the purchaser thereof in any manner as to the contents of the same, or shall use packages, barrels or casks having an inspector's brand thereon without having the oil inspected, he or she shall be deemed guilty of a misdemeanor, and shall be subject to a penalty in a sum not exceeding three hundred dollars (\$300) nor less than one hundred dollars (\$100), or to be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court. [Laws 1889, ch. 180, § 7, May 25.]

(3955) Casks branded by. § 14. Any person selling or dealing in the illuminating oils hereinbefore specified who shall sell or dispose of any empty barrel, cask or package that has once been used for such oils and been branded by a state or deputy inspector, before thoroughly canceling, removing or effacing the inspection brand on the same, shall be guilty of a misdemeanor, and on conviction thereof shall pay a fine of ten dollars (\$10) for each barrel, cask or package thus sold or disposed of. [Laws 1889, ch. 180, § 8, May 25.]

(3956) Penalty. § 15. Any person who knowingly uses for illuminating purposes any illuminating oils as hereinbefore specified before the same have been legally inspected and branded "Approved," as required in section one of this act,

shall be fined in any sum not exceeding one hundred dollars (\$100) nor less than twenty (20) dollars. [Laws 1889, ch. 180, § 9, May 25.]

(3957) Adulteration. § 16. No person shall adulterate with paraffine or other substance, for the purpose of sale or for use, any of the illuminating oils specified in this act, in such manner as to render them dangerous to use, nor shall any person sell or offer to sell or knowingly use for illuminating purposes any such adulterated oils which by reason of being adulterated will emit a combustible vapor at less temperature than one hundred and ten (110) degrees, Fahrenheit thermometer: *Provided*, That such vaporizing point shall be determined in the manner and with the instrument as hereinbefore provided in section three of this act. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred (500) dollars, or by both such fine and imprisonment, in the discretion of the court. [Laws 1889, ch. 180, § 10, May 25.]

(3958) Gas or vapor may be. § 17. Gas or vapor from petroleum or any of the products of the petroleum may be used for illuminating purposes when the oils from which said gas or vapor is generated are contained in closed reservoirs outside of the building lighted by said gas or vapor. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred (300) dollars, or by both such fine and imprisonment, at the discretion of the court: *Provided*, That nothing in this act shall be construed as to the use in street lamps of the lighter products of petroleum, such as gasoline, benzine, benzole, and naphtha. [Laws 1889, ch. 180, § 11, May 25.]

(3960) While in office, traffic. § 19. No state inspector or deputy inspector shall while in office traffic directly or indirectly in any of the oils which he has been appointed to inspect ;

and in case of a violation of this provision, the offender shall be fined in any sum not exceeding five hundred (500) dollars, and be removed from his position. [Laws 1889, ch.180, § 13, May 25.]

(3961) Complaint. § 20. It shall be the duty of the state inspector or any deputy inspector who shall know of the violation of any of the provisions of this act, to enter complaint before any court of competent jurisdiction against any person so offending; and in case the state inspector or deputy inspector having knowledge of such violation shall neglect to enter complaint, he shall be deemed guilty of a misdemeanor, and upon conviction shall be removed from his position. [Laws 1889, ch.180, § 14, May 25.]

(3962) County attorney, duty of. § 21. It shall be the duty of all county attorneys to represent and prosecute on behalf of the people within their respective counties all cases of offenses arising under the provisions of this act. [Laws 1889, ch.180, § 15, May 25.]

(3963) Questions of dispute. § 22. All questions of dispute arising between the deputy inspector and manufacturers and dealers shall be submitted to the state inspector for his decision, and his decision shall be final. [Laws 1889, ch.180, § 16, May 25.]

(3964) Governor, duty of. § 23. It shall be the duty of the governor to remove from office any state inspector who shall prove himself to be either unfaithful or incompetent in the discharge of his duties. [Laws 1889, ch.180, § 17, May 25.]

OIL AND GAS WELLS.

(3964a) Penalty. Any owner, or operator, or person who shall violate the provisions of the preceding sections of this act, shall be guilty of a misdemeanor, and shall be fined in the sum of five hundred dollars for each and every offense; which fine when collected shall be paid to the school fund of the county in which the well is situated. [Laws 1891, ch.151, § 3.]

CHAPTER 73.—PARDONS.

(3966) Governor may pardon. § 1. The governor may pardon any person convicted in any court of this state, of any offense against any law thereof, and upon such terms and conditions as he may prescribe in the pardon. But no such pardon shall be granted until after notice shall have first been given for two weeks of such application for a pardon, by publishing the said notice in a newspaper printed in the county where the conviction was had, which notice shall state the name of the applicant, the time when the application will be made, and the offense of which he was convicted; and in case no newspaper is published in such county, then the said notice may be given by posting the same at the court-house door of said county two weeks before such application. [G. S. 1868, ch. 73, § 1, Oct. 31.]

(3967) In writing. § 2. Such pardon shall be in writing, and attested by the great seal of the state; and upon the production thereof to any keeper of the prison in which such convict shall be confined, or officer in whose custody he shall be, he shall be released from custody. [G. S. 1868, ch. 73, § 2, Oct. 31.]

(*In re Boyd*, 34 K. 570.)

(3968) List. § 3. The governor, at each regular session of the legislature, shall communicate to both houses of the legislature a list of all persons pardoned by him during the preceding year, with a statement of the offense of which each was convicted, the time of imprisonment or amount of fine, and the condition, if any, upon which such pardon was granted. [G. S. 1868, ch. 73, § 3, Oct. 31.]

(3969) Reprieves. § 4. In capital cases, the governor may grant reprieves for a limited time, and during the time of such reprieve the sentence of the court shall be suspended, but at the expiration of said time the officer charged with the execution of the judgment in the case shall proceed to execute the judgment of the court in the same manner as if that were the time fixed by the judgment for the execution thereof. [G. S. 1868, ch. 73, § 4, Oct. 31.]

(3970) Sentence commuted. § 5. The governor may, when he deems it proper and advisable, commute a sentence in any criminal case by reducing the penalty as follows: *First*, If in a capital case, to imprisonment for life, or for a term not less than ten years at hard labor. *Second*, If the sentence of the court be for imprisonment, with or without hard labor, by reducing the duration thereof. *Third*, If a fine, by reducing the amount thereof. *Fourth*, If a fine and imprisonment, by reducing either or both. [G. S. 1868, ch. 73, § 5, Oct. 31.]

(3971) Not granted until. § 6. The governor shall have no power to grant any pardon to any person or persons till after he, she or they have been duly convicted. [G. S. 1868, ch. 73, § 6, Oct. 31.]

(3972) Without notice. § 7. The governor shall have the power to pardon any person confined in the state penitentiary, on account of good conduct, for the purpose of restoring him to civil rights, not more than ten days before the expiration of his term of imprisonment, without the notice provided for in section one of this act. [G. S. 1868, ch. 73, § 7, Oct. 31.]

(3973) Board of pardons. § 8. The governor shall appoint, by and with the consent of the senate, three persons, one of whom shall be an attorney at law, to be known as the board of pardons, whose duty it shall be to meet four times a year, at the state capitol, to consider the advisability of pardoning any convict in the state penitentiary, or commuting his sentence, in any case referred to them by the governor, or the warden or physician of the penitentiary, and to which board all applications for pardons shall be referred. Said board shall, as far as practicable, diligently inquire into the facts, and report the substance thereof, with their conclusions and recommendations, to the governor. Before entering upon the discharge of said duties they shall each take the usual official oath; and shall hold such office at the pleasure of the governor. Any vacancy in said board may be filled by the governor; and the governor may convene the board in special session if in his judgment the in-

terest of justice shall require such special convocation. [Laws 1885, ch. 148, § 1, March 1.]

(3974) Power. § 9. The said board of pardons may recommend the pardon of any convict confined in the state penitentiary without any petition, and in case of such recommendation by the board the governor shall give two weeks' notice in a newspaper published in the county where the conviction was had, before granting a pardon; no further notice need be given. [Laws 1885, ch. 148, § 2, March 1.]

(3975) Compensation. § 10. The members of said board shall each receive as full compensation five dollars for each day while actually and necessarily engaged in said duties, and in going to and returning from such meetings, and all actual expenses necessarily incurred, to be audited by the auditor of state upon sworn statements, and paid by the treasurer of state. [Laws 1885, ch. 148, § 3, March 1.]

(3976) Secretary. § 11. The private secretary of the governor, without charge, shall perform such clerical duties for the board as they may require. [Laws 1885, ch. 148, § 4, March 1.]

CHAPTER 74.—PARTNERSHIPS.

(3994) Fraud. § 18. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried. [G. S. 1868, ch. 74, § 18, Oct. 31.]

CHAPTER 76.—PATENTS.

(4005) Patent rights. § 3. It shall be unlawful for any person to sell or barter or offer to sell or barter any patent right, or any right which such person shall allege to be a patent

right, in any county within this state, without first filing with the clerk of the district court of such county copies of the letters patent, duly authenticated, and at the same time swearing or affirming to an affidavit before such clerk that such letters patent are genuine, and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented; which affidavit shall also set forth his name, age, occupation, and residence; and if an agent, the name, occupation and residence of his principal. A copy of this affidavit shall be filed in the office of said clerk, and said clerk shall give a copy of said affidavit to the applicant, who shall exhibit the same to any person on demand. [Laws 1889, ch. 182, § 1, March 15.]

(4006) Written obligation. § 4. Any person who may take any obligation in writing, for which any patent right, or right claimed by him or her to be a patent right, shall form a whole or any part of the consideration, shall, before it is signed by the maker or makers, insert in the body of said written obligation, above the signature of said maker or makers, in legible writing or print, the words, "Given for a patent right." [Laws 1889, ch. 182, § 2, March 15.]

(4007) Misdemeanor. § 5. Any person who shall sell or barter or offer to sell or barter within this state, or shall take any obligation or promise in writing for a patent right, or for what he may call a patent right, without complying with the requirements of this act, or shall refuse to exhibit the certificate when demanded, shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one thousand dollars, or be imprisoned in the jail of the proper county not more than six months, at the discretion of the court or jury trying the same, and shall be liable to the party injured, in a civil action, for any damages sustained. [Laws 1889, ch. 182, § 3, March 15.]

CHAPTER 79.—POOR.

(4065) Not sent out of county. § 39. It shall be unlawful for any person, either directly or indirectly, to send, or be instrumental in sending, or causing to be sent, out of the county where such person properly belongs, any pauper or person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this act. [Comp. Laws 1862, ch. 163, § 39, June 30.]

(4066) Violation of preceding section. § 40. Any person who shall violate the provisions of section thirty-nine of this act, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or imprisonment in the county jail not exceeding one year, or both such fine and imprisonment. [Comp. Laws 1862, ch. 163, § 40, June 30.]

CHAPTER 82.—PROCEDURE, CRIMINAL.

(5064) Name. § 1. This act shall be known as the code of criminal procedure of the state of Kansas. [G. S. 1868, ch. 82, § 1, Oct. 31.]

(5065) Offense. § 2. A public offense, within the meaning of this or any other statute, is any act or omission for which the laws of this state prescribe a punishment. [G. S. 1868, ch. 82, § 2, Oct. 31.]

(State v. Volmer, 6 K. 371; State v. Menhart, 9 K. 98; A. T. & S. F. Rld. Co. v. State, 22 K. 14.)

(5066) Division. § 3. Public offenses are divided into felonies and misdemeanors. [G. S. 1868, ch. 82, § 3, Oct. 31.]

(Haag v. Cooley, 33 K. 390.)

(5067) Felony. § 4. A felony is an offense punishable by death, or confinement and hard labor in the penitentiary. [G. S. 1868, ch. 82, § 4, Oct. 31.]

(Wise v. State, 2 K. 419; Haag v. Cooley, 33 K. 389.)

(5068) Misdemeanors. § 5. All other public offenses are misdemeanors. [G. S. 1868, ch. 82, § 5, Oct. 31.]

(*State v. Gurnee*, 14 K. 111.)

(5069) Liability. § 6. Any person charged with the commission of a public offense shall be liable to be arrested and proceeded against in the manner hereinafter provided. [G. S. 1868, ch. 82, § 6, Oct. 31.]

(5070) Preserve the peace. § 7. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and, in the execution of that power, to require persons to give security to keep the peace, in the manner provided in this article: The judges of the supreme court, throughout the state; judges of the district court, throughout their respective districts; justices of the peace, in their respective counties; the mayors and police magistrates or judges of incorporated cities and towns, within the limits of such corporation. [G. S. 1868, ch. 82, § 7, Oct. 31.]

(*State v. Menhart*, 9 K. 98; *State v. Davis*, 26 K. 205; *State v. Brooks*, 33 K. 710; *State v. Forbriger*, 34 K. 1, 5; *A. T. & S. F. Rld. Co. v. Rice*, 36 K. 596.)

(5071) Warrant. § 8. Whenever complaint shall be made, in writing and upon oath, to any such magistrate, that any person has threatened or is about to commit any offense against the person or property of another, and it appear upon such examination that there is reason to fear the commission of any such offense by the person complained of, it shall be the duty of the magistrate to issue a warrant, under his hand, with or without seal, commanding the officer to whom it is directed forthwith to apprehend the person so complained of and bring him before such magistrate. [G. S. 1868, ch. 82, § 8, Oct. 31.]

(*The State v. Dean*, 24 K. 54.)

(5072) Examination; recognizance. § 9. Upon such person being brought before such magistrate, it shall be the duty of the magistrate to examine all witnesses which either party may require to be examined; and if it shall appear, to the satisfaction of such magistrate, that there is reason to fear the commission of such offense, he shall require the party com-

plained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient securities, to appear before the district court on the first day of the next term, and not depart the same without leave; and, in the meanwhile, to keep the peace toward the people of this state, and particularly toward the complainant. [G. S. 1868, ch. 82, § 9, Oct. 31.]

(5073) Discharged or committed. §10. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which security was required. [G. S. 1868, ch. 82, § 10, Oct. 31.]

(5074) How discharged. §11. Any person committed for not finding surety of the peace as above provided may be discharged by any magistrate authorized to bind to the peace within the county upon giving such security as was originally required of such person. [G. S. 1868, ch. 82, § 11, Oct. 31.]

(5075) Recognizance. §12. Every recognizance to keep the peace, taken by any magistrate pursuant to the foregoing provisions or pursuant to any other statute, shall be forthwith transmitted by such magistrate to the clerk of the district court of the county. [G. S. 1868, ch. 82, § 12, Oct. 31.]

(5076) In presence of magistrate. §13. Every person who, in the presence of any magistrate above specified or of any court of record, shall make any affray, or threaten to kill or beat another or to commit any offense against his person or property, and all persons who in the presence of such court or magistrate shall contend with hot and angry words, may be ordered by such magistrate or court, without any other proof, to give such security as above specified; and in case of failure or refusal so to do, he may be committed in like manner as above provided. [G. S. 1868, ch. 82, § 13, Oct. 31.]

(5077) Default. §14. Every person who shall have entered into a recognizance to keep the peace shall appear before

the district court of the county at the next term; and if he fail to appear, the court shall forfeit his recognizance and order it to be prosecuted unless reasonable excuse for the default be shown. [G. S. 1868, ch. 82, § 14, Oct. 31.]

(5078) Neglect to appear. § 15. When any person shall have been bound to keep the peace on the complaint of another, and the complainant shall not appear, the party recognized shall be discharged unless good cause to the contrary be shown. [G. S. 1868, ch. 82, § 15, Oct. 31.]

(5079) Discharge recognizance. § 16. Upon the appearance of the respective parties, and in cases where there is no complaint, the court shall examine the evidence, and may either discharge the recognizance taken, or require a new recognizance, as the circumstances of the case may require, for such time as shall appear necessary, not exceeding one year; and in such cases, costs shall be adjudged according to the discretion of the court. [G. S. 1868, ch. 82, § 16, Oct. 31.]

(*State v. Menhart*, 9 K. 38; *State v. Dean*, 24 K. 53; *In re Mitchell*, 39 K. 762.)

(5080) Deemed broken. § 17. No recognizance to keep the peace shall be deemed to be broken, except in the case of a failure to appear, as hereinbefore provided, unless the principal in such recognizance be convicted of some offense, amounting, in judgment of law, to a breach of such recognizance. [G. S. 1868, ch. 82, § 17, Oct. 31.]

(5081) Order prosecution. § 18. Whenever evidence of such conviction shall be produced to the court in which such recognizance is filed or taken, it shall be the duty of the court to declare such recognizance forfeited, and to order the same to be prosecuted, and the attorney prosecuting for the county shall proceed thereon accordingly. [G. S. 1868, ch. 82, § 18, Oct. 31.]

(*In re Ebenhack*, 17 K. 618.)

(5082) Record conclusive. § 19. In the action on such recognizance, the offense stated in the record of conviction may be assigned as a breach, and such record shall be conclusive evidence of the matters therein stated. [G. S. 1868, ch. 82, § 19, Oct. 31.]

(*Woodruff v. Baldwin*, 23 K. 491.)

(5083) Where punished. § 20. Offenses committed against the laws of this state shall be punished in the county in which the offense is committed, except as may be otherwise provided by law. [G. S. 1868, ch. 82, § 20, Oct. 31.]

(*Millar v. State*, 2 K. 174; *Hunt v. State*, 4 K. 61; *State v. Ruth*, 21 K. 583; *In re Holcomb*, 21 K. 628, 636; *Woodruff v. Baldwin*, 23 K. 401; *State v. Small*, 26 K. 209; *State v. Bunker*, 38 K. 737; *United States v. Ward*, McC. 199; *United States v. Stahl*, McC. 206; *United States v. Stahl*, Wool. 192, McC. 206.)

(5084) Out of state, etc. § 21. Every person being without the state, committing or consummating an offense, by an agent or means within the state, is liable to be punished by the laws thereof in the same manner as if he were present and had commenced and consummated the offense within the state. [G. S. 1868, ch. 82, § 21, Oct. 31.]

(*In re Carr*, 28 K. 1.)

(5085) Leaving state to fight a duel. § 22. Any person leaving the state to fight a duel, or to be concerned as a second therein, or in any other capacity out of the state, is liable to be punished in the county of his residence, in the state, in the same manner as if the duel had been contemplated and fought and the results thereof had terminated therein. [G. S. 1868, ch. 82, § 22, Oct. 31.]

(5086) In two counties. § 23. When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county. [G. S. 1868, ch. 82, § 23, Oct. 31.]

(5087) On board a vessel. § 24. When an offense is committed in this state, or on the boundary thereof, on board a boat or vessel navigating a river, or lying therein, the jurisdiction is in any county within or opposite to which the offense is committed. [G. S. 1868, ch. 82, § 24, Oct. 31.]

(5088) Jurisdiction in any county. § 25. The jurisdiction of the following cases is in any county in which the offense was committed, or into or out of which the person upon whom the offense was committed has been brought—*First*, For taking or enticing away any female for the purpose of prostitution;

second, for taking, decoying or enticing away a child, under the age of fifteen years, with intent to detain and conceal it from its parents, guardian, or other person having lawful charge of the child. [G. S. 1868, ch. 82, § 25, Oct. 31.]

(State v. Goodwin, 33 K. 538.)

(5089) Stolen property. § 26. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another county, the jurisdiction is in either county. [G. S. 1868, ch. 82, § 26, Oct. 31.]

(5090) Brought into state. § 27. When property taken in any other state, territory or country, by burglary, robbery, larceny, or embezzlement, shall have been brought into this state, the jurisdiction is in any county into or through which such property shall have been brought. [G. S. 1868, ch. 82, § 27, Oct. 31.]

(5091) Accessory. § 28. An accessory, before or after the fact, may be punished in the county where he committed the offense, or in the county where the principal offense was committed. [G. S. 1868, ch. 82, § 28, Oct. 31.]

(5092) Wound in one county, death in another. § 29. If any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county. [G. S. 1868, ch. 82, § 29, Oct. 31.]

(State v. Bowen, 16 K. 475.)

(5093) At any time. § 30. Prosecutions for treason and murder may be commenced at any time after the commission of the offense. [G. S. 1868, ch. 82, § 30, Oct. 31.]

(5094) Sixty days. § 31. Prosecutions for an offense must be commenced within sixty days after its commission, where the penalty cannot exceed a fine of ten dollars. [G. S. 1868, ch. 82, § 31, Oct. 31.]

(5095) Two years. § 32. In all other cases, prosecutions for an offense must be commenced within two years after its commission. [G. S. 1868, ch. 82, § 32, Oct. 31.]

(State v. Pfefferle, 36 K. 90.)

(5096) Absence or concealment. § 33. If any person who has committed an offense is absent from the state, or so conceals himself that process cannot be served upon him, or conceals the fact of the crime, the time of absence or concealment is not to be included in computing the period of limitation. [G. S. 1868, ch. 82, § 33, Oct. 31.]

(*In re Griffith*, 35 K. 377.)

(5097) Time excluded. § 34. Where any indictment or information shall be quashed, set aside, or judgment reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offense. [G. S. 1868, ch. 82, § 34, Oct. 31.]

(5098) Process. § 35. For the apprehension of persons charged with offenses, the magistrates named in article two are authorized to issue process to carry into effect the provisions of this article. [G. S. 1868, ch. 82, § 35, Oct. 31.]

(*Rheinhardt v. State*, 14 K. 318; *In re Goldsmith*, 24 K. 757; *State v. Davis*, 26 K. 205.)

(5099) Duty upon complaint made. § 36. Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witness produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offense has been committed, the court or justice shall issue a warrant, naming or describing the offense charged to have been committed, and the county in which it was committed, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before some court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named to appear and give evidence on the examination. [G. S. 1868, ch. 82, § 36, Oct. 31.]

(*In re Schurman*, 40 K. 533; *A. T. & S. F. Rld. Co. v. Rice*, 36 K. 593; *State v. McLaughlin*, 35 K. 660; *Evans v. Thomas*, 32 K. 475; *State v. Gleason*, 32 K. 245; *In re Lewis*, 31 K. 71; *Tilson v. State*, 29 K. 452; *State v. Spaulding*,

24 K. 1; Jennings v. State, 13 K. 80; State v. Beebe, 13 K. 595; Redmond v. State, 12 K. 172; State v. Armell, 8 K. 288; Bauer v. Clay, 8 K. 580; Prell v. McDonald, 7 K. 427.)

(5100) Warrant. § 37. Such warrant may be substantially in the following form, varying the terms to suit the case: "The state of Kansas, _____ county. The state of Kansas to any sheriff or constable of the state of Kansas: It appearing that there are reasonable grounds for believing that A B has committed the offense of _____, in the county of _____, you are therefore commanded forthwith to arrest A B and bring him before some magistrate of the county of _____, to be dealt with according to law.—C D, Justice of the Peace for _____ County." [G. S. 1868, ch. 82, § 37, Oct. 31.]

(Evans v. Thomas, 32 K. 475; State v. Smith, 13 K. 296.)

(5101) Fled from county. § 38. Upon complaint made to any magistrate of any county in this state that a criminal offense has been committed, and that the offender has fled from the county in which the offense was committed, such magistrate shall issue a warrant, directed to an officer of his own county or of the county in which the offense was committed, requiring the offender to be apprehended and taken before some magistrate of the county where the offense was committed, to be dealt with according to law. [G. S. 1868, ch. 82, § 38, Oct. 31.]

(5102) Escaping from county. § 39. If any person against whom a warrant may be issued for an alleged offense committed in any county shall, before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed may pursue and apprehend the party charged in any county in this state, and for that purpose may command aid and exercise the same authority as in his own county. [G. S. 1868, ch. 82, § 39, Oct. 31.]

(5103) Recognizance. § 40. In all cases where the offense charged in the warrant is not punishable by death or imprisonment in the state penitentiary, if the person arrested requests that he may be brought before a magistrate of the county in

which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offense, and next to be holden in the county where it shall be alleged to have been committed; and the party arrested shall thereupon be liberated. [G. S. 1868, ch. 82, § 40, Oct. 31.]

(Redmond v. State, 12 K. 172, 175; State v. Weatherwax, 12 K. 463; State v. Spaulding, 24 K. 1.)

(5104) Warrant and recognizance. § 41. The magistrate who shall so let the person arrested to bail shall certify that fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and, on application of the complainant, the prosecuting attorney shall cause such witnesses to be summoned to the same court as may be deemed necessary. [G. S. 1868, ch. 82, § 41, Oct. 31.]

(Gay v. State, 7 K. 402; Redmond v. State, 12 K. 172.)

(5105) When prisoner not bailed. § 42. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with according to law. [G. S. 1868, ch. 82, § 42, Oct. 31.]

(Redmond v. State, 12 K. 172.)

(5106) In certain offenses. § 43. When the offense charged in any warrant is punishable with death or by imprisonment in the state penitentiary, the officer making the arrest in some other county shall convey the prisoner to the county where

the warrant issued, and he shall be proceeded with in the manner directed by law. [G. S. 1868, ch. 82, § 43, Oct. 31.]

(5107) Return of warrant. § 44. Every person arrested by warrant for any offense, where no other provision is made for his examination thereon, shall be brought before some magistrate of the same county; and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to such magistrate. [G. S. 1868, ch. 82, § 44, Oct. 31.]

(5108) Adjournment. § 45. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the defendant or person charged, and to the same or different place in the county, as he shall think proper; and, in such case, if the party be charged with a capital offense, he shall be committed in the mean time; otherwise, he may be recognized in a sum, with sureties to the satisfaction of the magistrate, for his appearance for such further examination; and for want of such recognizance, he shall be committed. [G. S. 1868, ch. 82, § 45, Oct. 31.]

(Phillips v. Thralls, 26 K. 780, 782; Tillson v. State, 29 K. 452.)

(5109) Failure to appear. § 46. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the district court; and like proceedings shall be had thereon as upon the breach of the condition of recognizance for appearance before that court. [G. S. 1868, ch. 82, § 46, Oct. 31.]

(5110) Failure to recognize. § 47. When such person shall fail to recognize, he shall be committed to prison by an order, under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order, in writing, to a different person. [G. S. 1868, ch. 82, § 47, Oct. 31.]

(5111) Testimony. § 48. The magistrate before whom any person is brought, upon a charge of having committed an offense, shall, as soon as may be, examine the complainant and the witnesses to support the prosecution, on oath, in the presence of the party charged. [G. S. 1868, ch. 82, § 48, Oct. 31.]

(5112) In support of prisoner. § 49. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution. [G. S. 1868, ch. 82, § 49, Oct. 31.]

(5113) Witnesses excluded. § 50. The magistrate, while examining any witness, may, at his discretion, exclude from the place of examination all other witnesses; he may, also, if requested, or if he see cause, direct the witnesses for or against the prisoner to be kept separate, so that they cannot converse with each other, until they shall have been examined. [G. S. 1868, ch. 82, § 50, Oct. 31.]

(5114) Reduced to writing. § 51. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate. [G. S. 1868, ch. 82, § 51, Oct. 31.]

(5115) Discharged. § 52. If it shall appear to the magistrate, upon the whole examination, that no offense has been committed, or that there is not probable cause for charging the prisoner with the offense, he shall be discharged. [G. S. 1868, ch. 82, § 52, Oct. 31.]

(5116) Not admitted to bail. § 53. Persons charged with an offense punishable with death shall not be admitted to bail, when the proof is evident or the presumption great; but for all other offenses bail may be taken, in such sums as in the opinion of the magistrate will secure the appearance of the person charged with the offense, at the court where such person is to be tried. [G. S. 1868, ch. 82, § 53, Oct. 31.]

(Redmond v. State, 12 K. 175.)

(5117) Bail. § 54. If it shall appear that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense be bailable by the magistrate and the prisoner offer sufficient bail, it shall be taken, and the prisoner discharged; but if no sufficient bail be offered, or the offense be not bailable by the magistrate, the prisoner shall be committed for trial. [G. S. 1868, ch. 82, § 54, Oct. 31.]

(State v. Tennison, 39 K. 726; Tillson v. State, 29 K. 457.)

(5118) Of offense other than charged. § 55. If upon the trial it shall appear that the defendant is guilty of a public offense other than that charged in the warrant, he shall be held in custody of the officer and tried for such offense, a reasonable opportunity having been given him to obtain his witnesses and prepare his defense. [G. S. 1868, ch. 82, § 55, Oct. 31.]

(Redmond v. State, 12 K. 172.)

(5119) Commitment. § 56. If the defendant is committed to jail, the magistrate shall make out a written order of commitment, signed by him, which shall be delivered to the jailer by the officer who executes the order of commitment. He shall indorse upon the order of commitment the sum in which bail is required. [G. S. 1868, ch. 82, § 56, Oct. 31.]

(5120) Recognizance of witnesses. § 57. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next term of the court having cognizance of the offense, and in which the prisoner shall be held to answer. [G. S. 1868, ch. 82, § 57, Oct. 31.]

(State v. Lane, 11 K. 458.)

(5121) With surety. § 58. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court. [G. S. 1868, ch. 82, § 58, Oct. 31.]

(5122) For defendant. § 59. The magistrate shall in like manner, at the defendant's request, cause the material witnesses for the defendant to enter into recognizances for appearing and testifying in the court having cognizance of the offense; but it shall be stated in the recognizances that they are witnesses for the defendant, and the state shall not be liable for their attendance and mileage as witnesses. [G. S. 1868, ch. 82, § 59, Oct. 31.]

(5123) Married woman and minor. § 60. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law. [G. S. 1868, ch. 82, § 60, Oct. 31.]

(5124) Witness committed. § 61. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or be otherwise discharged according to law. [G. S. 1868, ch. 82, § 61, Oct. 31.]

(5125) Prisoner bailed. § 62. Any judge of a court of record, on application of any prisoner committed for a bailable offense, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient sureties to recognize him may be admitted to bail by either of said judges, or by the committing magistrate. [G. S. 1868, ch. 82, § 62, Oct. 31.]

(Bloss v. State, 11 K. 462.)

(5126) Associate magistrate. § 63. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and duties before mentioned; but no fees shall be taxed for such associates. [G. S. 1868, ch. 82, § 63, Oct. 31.]

(5127) Examination and recognizance to be certified. § 64. All examinations and recognizances, taken by any magistrate in pursuance of the provisions of this article, shall be

forthwith certified and returned by him to the clerk of the court before which the party charged is bound to appear; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith, by rule of court, and in case of disobedience may be proceeded against by attachment, as for contempt. [G. S. 1868, ch. 82, § 64, Oct. 31.]

(5128) Default. § 65. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and proceedings instituted upon the recognizance. [G. S. 1868, ch. 82, § 65, Oct. 31.]

(5129) How prosecuted. § 66. Offenses may be prosecuted in the court having jurisdiction, either by indictment or information, as hereinafter provided. [G. S. 1868, ch. 82, § 66, Oct. 31.]

(The State v. White, 14 K. 538; Jackson v. The State, 4 K. 150; The State v. Barnett, 3 K. 253.)

(5130) Informations may be filed. § 67. Informations may be filed during term-time or in vacation, in any court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant. He shall subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time of filing the same. He shall also indorse thereon the names of such other witnesses as may afterward become known to him, at such times before the trial as the court may by rule or otherwise prescribe. All informations shall be verified by the oath of the prosecuting attorney, complainant, or some other person. [G. S. 1868, ch. 82, § 67, as amended by Laws 1887, ch. 178, § 1, June 20.]

(*In re Eddy*, 40 K. 592; *State v. Cook*, 30 K. 82, 85; *State v. Teissedre*, 30 K. 476; *State v. Dowd*, 39 K. 412; *State v. Metsch*, 37 K. 222; *The State v. Shenkle*, 36 K. 43; *State v. Taylor*, 36 K. 329; *State v. Clark*, 34 K. 289; *State v. Drake*, 33 K. 151; *State v. Hart*, 33 K. 218; *State v. Brooks*, 33 K. 708; *State v. Babbitt*, 32 K. 253; *State v. Blackman*, 32 K. 615; *State v. McKinney*, 31 K. 570; *State v. Schweiter*, 27 K. 505; *State v. Tannahill*, 4 K. 117; *State v. Nulf*, 15 K. 404; *State v. Baird*, 10 K. 58; *State v. Dickson*, 6 K. 209; *State v. Medlicott*, 9 K. 257; *State v. Otey*, 7 K. 69; *Jackson v. State*, 4 K. 150; *State v. Thompson*, 2 K. 432.)

(5131) How verified. § 67a. When the information in any case is verified by the county attorney, it shall be sufficient if the verification be upon information and belief. [Laws 1871, ch. 117, § 3, March 16.]

(State v. Gould, 40 K. 258; State v. Whisner, 35 K. 271; State v. Longton, 35 K. 375; State v. Bjorkland, 34 K. 377; *In re* Gilson, 34 K. 641; State v. Gleason, 32 K. 245; State v. Otey, 7 K. 69; State v. Ruth, 21 K. 583; The State v. Nulf, 15 K. 404; State v. Montgomery, 8 K. 351.)

(5132) Duty of prosecuting attorney. § 68. It shall be the duty of the prosecuting attorney for the proper county to inquire into all cases of preliminary examinations as provided by law, touching the commission of any offense, whenever the offender shall be committed to jail or be recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case; and such statement shall be filed on the first day of the term of the court at which the offender shall be held for appearance. [G. S. 1868, ch. 82, § 68, Oct. 31.]

(The State v. Nulf, 15 K. 404.)

(5133) No information shall be filed. § 69. No information shall be filed against any person for any felony until such person shall have had a preliminary examination therefor as provided by law, before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such examination: *Provided, however,* That informations may be filed without such examination against fugitives from justice, and in misdemeanor cases not cognizable before justices of the peace. Where proceedings are commenced originally by information in the district court, the clerk of the court, during vacation, shall issue a warrant, naming the offense charged to have been committed and the county in which it was committed, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the judge or the clerk of said court to be admitted to bail for his appearance

at the next term of the court to be held in said county. In case the defendant shall fail to give bond for such appearance, in such sum as in the opinion of the judge or the clerk will secure the appearance of the person charged with the offense at the court where such person is to be tried, the prisoner shall be committed for trial, and there shall be indorsed upon the order of commitment the sum in which bail is required. [G. S. 1868, ch. 82, § 69, as amended by Laws 1887, ch. 178, § 2, June 20.]

(*Redmond v. State*, 12 K. 172; *Jennings v. State*, 13 K. 80, 90; *State v. Smith*, 13 K. 274; *State v. Spaulding*, 24 K. 1, 4; *State v. Tennison*, 39 K. 726; *In re Mallison*, 36 K. 725; *State v. Bailey*, 32 K. 83, 88; *State v. Gleason*, 32 K. 251; *In re Donnelly*, 30 K. 195; *State v. Watson*, 30 K. 281; *State v. Plowman*, 28 K. 569; *State v. Lewis*, 19 K. 260; *State v. Jones*, 16 K. 608; *State v. Finley*, 6 K. 366; *State v. Barnett*, 3 K. 250.)

(5134) Fugitive. § 70. Any fugitive from justice against whom an information may be filed may be demanded by the governor of this state of the executive authority of any other state or territory, or of any foreign government, in the same manner, and the same proceedings may be had thereon, as provided by law in like cases of demand upon indictment found. [G. S. 1868, ch. 82, § 70, Oct. 31.]

(5135) Compel prosecution. § 71. The district judge may in extreme cases, upon affidavits with him filed of the commission of crime, require the prosecuting attorney to prosecute any criminal by information for such crime, and may compel, by attachment, fine, or imprisonment, the compliance with this section. [G. S. 1868, ch. 82, § 71, Oct. 31.]

(*State v. Nulf*, 15 K. 404; *Jennings v. State*, 13 K. 80; *State v. Montgomery*, 8 K. 351.)

(5136) Amendment. § 72. An information may be amended in matter of substance or form at any time before the defendant pleads, without leave. The information may be amended on the trial as to all matters of form, at the discretion of the court, when the same can be done without prejudice to the rights of the defendant. No amendment shall cause any delay of the trial, unless for good cause shown by affidavit. [G. S. 1868, ch. 82, § 72, Oct. 31.]

(*State v. Cook*, 30 K. 82; *State v. Teissedre*, 30 K. 476; *State v. Dowd*,

39 K. 412; *State v. Hart*, 33 K. 218; *State v. Redford*, 32 K. 198; *State v. Sterns*, 28 K. 154; *State v. Henry*, 24 K. 457; *State v. Otey*, 7 K. 69; *State v. Adams*, 20 K. 311; *City of Burlington v. James*, 17 K. 221.)

(5137) Grand jury ordered; petition. § 73. A grand jury shall hereafter only be ordered drawn and summoned to attend the sittings of the district court in any county in the state as hereinafter provided. In each organized county in this state a grand jury shall be ordered drawn and summoned to attend any sitting of the district court of any county when a petition signed by one hundred of the taxpayers of the county, praying for said grand jury, shall be presented to the judge of the district court of said county at least twelve days before the commencement of the term of court at which such grand jury may be desired by said petitioners; and upon such petition, the judge shall order a grand jury drawn and summoned to attend the sitting of the term of court for which such grand jury is desired by the said petitioners. Grand jurors provided for in this section shall be drawn and summoned in the same manner as jurors for the district court: *Provided*, That if upon inquiry into the matter the judge of the district court of any county shall become satisfied that there is no necessity for the convening of the grand jury therein at said term, he shall certify that fact to the county clerk of said county at least one month before the commencement of said term, and no grand jury shall be summoned therefor. [G. S. 1868, ch. 82, § 73, as amended by Laws 1889, ch. 152, § 1, March 8.]

(*State v. Marsh*, 13 K. 596.)

(5138) Fifteen grand jurors to be summoned. § 74. There shall be fifteen grand jurors summoned and sworn on any grand jury, and from the persons summoned to serve as grand jurors and appearing, the judge of the court shall appoint a foreman; and in every case when any person appointed foreman shall be discharged or excused before the grand jury shall be dismissed, the judge shall appoint a foreman in his place. In case any grand juror fails to attend, or is discharged, his place shall be filled by a talesman, to be selected by the judge. [G. S.

1868, ch. 82, § 74, as amended by Laws 1887, ch. 167, § 2, March 2.]

(State v. Copp, 34 K. 522.)

(5140) Oath of foreman. § 75. An oath or affirmation shall be administered to the foreman of the grand jury, in substance as follows: "You, as foreman of the grand jury, shall diligently inquire, and due presentment make, of all public offenses against the laws of this state, cognizable by this court, committed or triable within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill-will, nor leave any unrepresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding." [G. S. 1868, ch. 82, § 75, Oct. 31.]

(State v. Skinner, 34 K. 256.)

(5141) Of grand jury. § 76. The following oath or affirmation must thereupon be administered to the other grand jurors present: "The same oath or affirmation which your foreman has taken now before you, on his part, you, and each of you, shall well and truly observe on your part." [G. S. 1868, ch. 82, § 76, Oct. 31.]

(State v. Skinner, 34 K. 256.)

(5142) Challenged. § 77. Any person held to answer to a criminal charge may object to the competency of anyone summoned to serve as a grand juror, before he is sworn, on the ground that he is the prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned, or bound in a recognizance as such; and if such objection be established, the person so challenged shall be set aside. [G. S. 1868, ch. 82, § 77, Oct. 31.]

(5143) Not allowed. § 78. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other cases than such as are specified in the last section. [G. S. 1868, ch. 82, § 78, Oct. 31.]

(5144) Irregularity. § 79. No plea in abatement, or other objection, shall be taken to any grand jury duly charged and sworn, for any alleged irregularity in their selection, unless such irregularity, in the opinion of the court, amounts to corruption, in which case such plea or objection shall be received. [G. S. 1868, ch. 82, § 79, Oct. 31.]

(State v. Skinner, 34 K. 256; State v. Copp, 34 K. 526; State v. Marsh, 13 K. 596.)

(5145) Foreman administer oath, etc. § 80. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence in any matter cognizable by them. [G. S. 1868, ch. 82, § 80, Oct. 31.]

(5146) Clerk. § 81. Every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them, which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury. [G. S. 1868, ch. 82, § 81, Oct. 31.]

(5147) Duty of attorney. § 82. Whenever required by any grand jury, it shall be the duty of the attorney prosecuting in the county to attend them for the purpose of examining witnesses in their presence, or giving them advice upon any legal matter. [G. S. 1868, ch. 82, § 82, Oct. 31.]

(State v. Skinner, 34 K. 256.)

(5148) Prosecuting attorney. § 83. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them when they or he shall deem it necessary; but no such attorney, or any other officer or person, except the grand jurors, shall be permitted to be present during the expression of their opinions or the giving their votes on any matter before them. [G. S. 1868, ch. 82, § 83, Oct. 31.]

(5149) Subpœna. § 84. Whenever thereto required by any grand jury, or the foreman thereof, or by the prosecuting attorney, the clerk of the court in which such jury is impaneled shall issue subpœnas and other process to bring witnesses to testify before such grand jury. [G. S. 1868, ch. 82, § 84, Oct. 31.]

(5150) Enforce attendance. § 85. If any witness, duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna issued out of such court in other cases. [G. S. 1868, ch. 82, § 85, Oct. 31.]

(Butler v. McMillen, 13 K. 391.)

(5151) Refusal to testify. § 86. If any witness appearing before a grand jury shall refuse to testify or to answer any interrogatories, in the course of his examination, the fact shall be communicated to the court in writing, on which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision. [G. S. 1868, ch. 82, § 86, Oct. 31.]

(5152) Proceedings. § 87. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court. [G. S. 1868, ch. 82, § 87, Oct. 31.]

(5153) Contempt; discharge. § 88. If any such witness shall be committed for a contempt on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged until he enter into a recognizance, with sufficient security, for his appearance at the next term of the court, and not to depart such court without leave. [G. S. 1868, ch. 82, § 88, Oct. 31.]

(5154) Second grand jury. § 89. If any offense be committed or discovered during the sitting of any court, after the grand jury attending such court shall be discharged, such court may, in its discretion, by an order to be entered on its minutes, direct the sheriff to summon another grand jury to attend the same term. [G. S. 1868, ch. 82, § 89, Oct. 31.]

(*State v. Marsh*, 13 K. 596; *Madden v. State*, 1 K. 342.)

(5155) The same. § 90. The sheriff shall accordingly forthwith summons such grand jury from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand juries. [G. S. 1868, ch. 82, § 90, Oct. 31.]

(5156) Grand jury to disclose what. § 91. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such grand jury is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person, upon a complaint against such person for perjury, or upon his trial for such offense. [G. S. 1868, ch. 82, § 91, Oct. 31.]

(5157) Not allowed. § 92. No member of a grand jury shall be obliged or allowed to testify or declare in what manner he or any other member of the grand jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question. [G. S. 1868, ch. 82, § 92, Oct. 31.]

(*State v. Standish*, 37 K. 645.)

(5158) Secresy. § 93. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor. [G. S. 1868, ch. 82, § 93, Oct. 31.]

(*State v. Skinner*, 34 K. 256.)

(5159) Charging. § 94. In charging grand juries, the court shall apprise them of the provisions of the last three sections, in relation to disclosures, and in what cases and under what circumstances any disclosures may or may not be made. [G. S. 1868, ch. 82, § 94, Oct. 31.]

(5160) Concurrence. § 95. No indictment can be found without the concurrence of at least twelve grand jurors. When so found, and not otherwise, the foreman of the grand jury shall indorse it thus: "A true bill.—A B, foreman." [G. S. 1868, ch. 82, § 95, Oct. 31.]

(Laurent v. State, 1 K. 313; Madden v. State, 1 K. 342; State v. Schmidt, 34 K. 399; State v. Copp, 34 K. 522.)

(5161) No concurrence. § 96. Where there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that such indictment is "Not a true bill." [G. S. 1868, ch. 82, § 96, Oct. 31.]

(5162) Indictment presented. § 97. Indictments found by a grand jury shall be presented by their foreman, in their presence, to the court, and shall be filed and remain as records of such court. [G. S. 1868, ch. 82, § 97, Oct. 31.]

(Laurent v. The State, 1 K. 313; Millar v. State, 2 K. 174; State v. Standish, 37 K. 645.)

(5163) Signed by attorney. § 98. Each indictment must be signed by the prosecuting attorney; and when the grand jury return any indictment into court the judge must examine it, and if the foreman has neglected to indorse it "A true bill," with his name signed thereto, or if the prosecuting attorney has neglected to sign his name, the court must cause the foreman to indorse, or the prosecuting attorney to sign it, as the case may require, in the presence of the jury. [G. S. 1868, ch. 82, § 98, Oct. 31.]

(Craft v. State, 3 K. 450; State v. Tannahill, 4 K. 117.)

(5164) Names of witnesses to be indorsed. § 99. When an indictment is presented by the grand jury the names of all the material witnesses known at the time to the public prosecutor must be indorsed upon the indictment, but the names of other witnesses may afterwards be indorsed on said

indictment before or during the trial, as the court may by rule or otherwise prescribe, and said witnesses be subpoenaed by the state; but unless the names of such witnesses as were known to the public prosecutor before the commencement of the trial be indorsed on the indictment, no continuance shall be granted to the state on account of absence of any witness whose name is not thus indorsed. [G. S. 1868, ch. 82, § 99, as amended by Laws 1887, ch. 167, § 3, March 2.]

(*State v. Schmidt*, 34 K. 399; *State v. Dickson*, 6 K. 219.)

(5165) Prosecutions. § 100. All criminal prosecutions shall be in the name of the state of Kansas. [G. S. 1868, ch. 82, § 100, Oct. 31.]

(*City of Emporia v. Volmer*, 12 K. 622.)

(5166) Pleadings. § 101. The forms of pleadings in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein described. [G. S. 1868, ch. 82, § 101, Oct. 31.]

(*Head v. Daniels*, 38 K. 12; *State v. Fooks*, 29 K. 425; *State v. White*, 14 K. 538; *Madden v. State*, 1 K. 340.)

(5167) First pleading. § 102. The first pleading on the part of the state is an indictment or information. [G. S. 1868, ch. 82, § 102, Oct. 31.]

(*In re Griffith*, 35 K. 377.)

(5168) Contain what. § 103. The indictment or information must contain: *First*, The title of the action, specifying the name of the court to which the indictment or information is presented, and the name of the parties; *second*, a statement of the facts constituting the offense, in plain and concise language, without repetition. [G. S. 1868, ch. 82, § 103, Oct. 31.]

(*State v. Decker*, 36 K. 717; *State v. Knowles*, 34 K. 393; *State v. Cooper*, 31 K. 505; *State v. Jennings*, 24 K. 642; *State v. Whitby*, 15 K. 402; *State v. White*, 14 K. 538; *Prell v. McDonald*, 7 K. 426; *Madden v. State*, 1 K. 340; *Smith v. State*, 1 K. 365.)

(5169) Direct and certain. § 104. The indictment or information must be direct and certain, as it regards the party and the offense charged. [G. S. 1868, ch. 82, § 104, Oct. 31.]

(*State v. Tilney*, 38 K. 714; *State v. Cooper*, 31 K. 507; *State v. Beebe*, 17 K. 402; *Millar v. State*, 2 K. 174; *Madden v. State*, 1 K. 340.)

(5170) Time. § 105. The precise time of the commission of an offense need not be stated in the indictment or information; but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable ingredient in the offense. [G. S. 1868, ch. 82, § 105, Oct. 31.]

(State v. Hughes, 35 K. 626; State v. Harp, 31 K. 496; State v. Cooper, 31 K. 505; City of Emporia v. Volmer, 12 K. 622; State v. Lewis, 10 K. 157; State v. Barnett, 3 K. 250.)

(5171) Names of owners. § 106. In an indictment or information for an offense committed in relation to property, it is sufficient to state the name of any one, or names of several or joint owners. [G. S. 1868, ch. 82, § 106, Oct. 31.]

(State v. Taylor, 15 K. 420.)

(5172) Words in indictment. § 107. The words used in the indictment or information must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [G. S. 1868, ch. 82, § 107, Oct. 31.]

(State v. Baldwin, 36 K. 1; Smith v. State, 1 K. 365; State v. White, 14 K. 538.)

(5173) Words of the statutes. § 108. Words used in the statutes to define a public offense need not be strictly pursued, but other words conveying the same meaning may be used. [G. S. 1868, ch. 82, § 108, Oct. 31.]

(State v. Baldwin, 36 K. 1; State v. McGaffin, 36 K. 315; State v. Beverlin, 30 K. 613; State v. White, 14 K. 538; State v. Barnett, 3 K. 250.)

(5174) Indictment sufficient. § 109. The indictment or information is sufficient if it appear therefrom —

First, That the indictment was found by the grand jury of the county in which the court is held, or the information presented by the prosecuting attorney of the county in which the court is held; *second*, that the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors, or in an information by the prosecuting attorney; *third*, that the offense was committed within the jurisdiction of the court, or is triable therein; *fourth*, that the offense charged is clearly set forth, in plain and concise language, without repeti-

tion; and, *fifth*, that the offense charged is stated with such a degree of certainty that the court may pronounce judgment upon conviction, according to the right of the case. [G. S. 1868, ch. 82, § 109, Oct. 31.]

(Territory v. Freeman, McC. 56; Territory v. Reyburn, McC. 134; Laurent v. State, 1 K. 313; Madden v. State, 1 K. 340; Wise v. State, 2 K. 419; Rice v. State, 3 K. 142; Hagan v. State, 4 K. 90; Jackson v. State, 4 K. 150; State v. Finley, 6 K. 366; State v. McCord, 8 K. 232; State v. Pitman, 10 K. 593; State v. Walter, 14 K. 375; State v. White, 14 K. 538; State v. Potter, 15 K. 302; State v. Bowen, 16 K. 475; State v. Brown, 21 K. 38; State v. O'Kane, 23 K. 244; State v. Pitzer, 23 K. 250; State v. Lewis, 26 K. 123; State v. Olferman, 29 K. 502; State v. Foster, 30 K. 365; State v. Harp, 31 K. 500; State v. Bryan, 34 K. 63; State v. Knowles, 34 K. 393; State v. Schmidt, 34 K. 399; State v. Rohrer, 34 K. 427; State v. Witt, 34 K. 488; State v. Whisner, 35 K. 271; State v. Dowd, 39 K. 412; State v. Knadler, 40 K. 359; State v. Palmer, 40 K. 474; State v. Smith, 40 K. 631.)

(5175) Not quashed, when. § 110. No indictment or information may be quashed or set aside for any of the following defects: *First*, For a mistake in the name of the court or county in the title thereof; *second*, for the want of an allegation of the time or place of any material fact, when the venue and time have once been stated in the indictment or information; *third*, that dates and numbers are represented by figures; *fourth*, for an omission of any of the following allegations, viz.: "With force and arms," "Contrary to the form of the statute," or, "Against the peace and dignity of the state of Kansas"; *fifth*, for an omission to allege that the grand jurors were impaneled, sworn, or charged; *sixth*, for any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged; nor, *seventh*, for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [G. S. 1868, ch. 82, § 110, Oct. 31.]

(State v. Smith, 38 K. 194; State v. Sipe, 38 K. 201; State v. Hughes, 35 K. 626; State v. Redford, 32 K. 200; State v. Barnett, 3 K. 250; State v. Harp, 31 K. 496; State v. Cooper, 31 K. 508; West v. City of Columbus, 20 K. 633; State v. Stillwell, 16 K. 26; State v. Nulf, 15 K. 404; State v. White, 14 K. 538; The State v. Finley, 6 K. 366; State v. Thompson, 2 K. 432, 433; Madden v. State, 1 K. 340.)

(5176) Not state. § 111. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment or information. [G. S. 1868, ch. 82, § 111, Oct. 31.]

(*State v. Fooks*, 29 K. 425; *Smith v. City of Emporia*, 27 K. 528; *City of Olathe v. Adams*, 15 K. 391.)

(5177) Pleading judgment. § 112. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege, generally, that the judgment or determination was duly made or had before such court or officer, but the facts constituting the jurisdiction must be established on trial. [G. S. 1868, ch. 82, § 112, Oct. 31.]

(*State v. Bowen*, 16 K. 475.)

(5178) Private statute. § 113. In pleading a private statute or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its approval, and the court must take notice thereof. [G. S. 1868, ch. 82, § 113, Oct. 31.]

(*Territory v. Reyburn*, McC. 134.)

(5179) Several defendants. § 114. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. [G. S. 1868, ch. 82, § 114, Oct. 31.]

(*State v. Sterns*, 28 K. 154; *State v. Gurnee*, 14 K. 111.)

(5180) Counseling or aiding. § 115. Any person who counsels, aids or abets in the commission of any offense may be charged, tried and convicted in the same manner as if he were a principal. [G. S. 1868, ch. 82, § 115, Oct. 31.]

(*State v. Shenkle*, 36 K. 43; *State v. Mosley*, 31 K. 355; *State v. Brown*, 21 K. 38; *State v. Winner*, 17 K. 298; *State v. Gurnee*, 14 K. 111; *State v. Cassady*, 12 K. 550, 555; *Lewis v. State*, 4 K. 296.)

(5181) Accessory after fact. § 116. An accessory after the fact to the commission of a felony may be charged, tried and punished, though the principal be neither charged nor tried. [G. S. 1868, ch. 82, § 116, Oct. 31.]

(5182) Recorded. § 117. Every indictment must be recorded by the clerk during the term at which the same is found, in a book to be kept for that purpose; the judge must compare the record with the original indictment and certify the correctness thereof. In case the original indictment is lost or de-

stroyed, the defendant may be tried upon a copy taken from the record and certified by the clerk, without any delay from that cause. [G. S. 1868, ch. 82, § 117, Oct. 31.]

(5183) Loss or destruction. § 118. In case of the loss or destruction of an information, the prosecuting attorney may file in court another information, and the prosecution shall proceed and the trial be had without any delay from that cause. [G. S. 1868, ch. 82, § 118, Oct. 31.]

(State v. Plowman, 28 K. 569; Millar v. State, 2 K. 174.)

(5184) Not inspected. § 119. Indictments and informations against persons not in custody or who have not given bail, and the records of such indictments and informations as are in the custody of the clerk, shall not be inspected by any person except the court, the clerk and his deputy, and the prosecuting attorney, until after the arrest of the defendant. [G. S. 1868, ch. 82, § 119, Oct. 31.]

(5185) Not disclosed. § 120. No grand juror, prosecuting attorney, clerk, judge or other officer can disclose the fact that an indictment is found or information is filed until the defendant has been arrested, except any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this and the next preceding section is punishable as a misdemeanor. [G. S. 1868, ch. 82, § 120, Oct. 31.]

(5186) Inferior degree. § 121. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto or of an attempt to commit the offense. [G. S. 1868, ch. 82, § 121, Oct. 31.]

(State v. Brandon, 7 K. 106; State v. McCord, 8 K. 232; State v. Cassady, 12 K. 550; State v. Behee, 17 K. 402; State v. Howard, 19 K. 507; State v. O'Kane, 23 K. 244; State v. Watson, 30 K. 281; State v. Colgate, 31 K. 511; State v. Cooper, 31 K. 506; State v. Burwell, 34 K. 312; State v. Miller, 35 K. 328; State v. Mize, 36 K. 187; State v. Evans, 36 K. 497; State v. Decker, 36 K. 717.)

(5187) The same. § 122. Upon the trial of an indictment for a felony, the defendant may be found guilty of any other

felony or misdemeanor, necessarily included in that with which he is charged in the indictment or information. [G. S. 1868, ch. 82, § 122, Oct. 31.]

(Guy v. State, 1 K. 448; Roy v. State, 2 K. 405; State v. O'Kane, 23 K. 244; State v. Colgate, 31 K. 511; State v. Burwell, 34 K. 312; State v. Mowry, 37 K. 369, 370.)

(5188) Joinder. § 123. Counts for murder in the first or second degree, and for manslaughter, may be joined in the same indictment or information, and on the trial the defendant may be convicted of either offense. [G. S. 1868, ch. 82, § 123, Oct. 31.]

(State v. Chandler, 31 K. 201; State v. O'Connell, 31 K. 383; State v. Goodwin, 33 K. 538; State v. Skinner, 34 K. 256; State v. Schmidt, 34 K. 399; State v. Guettler, 34 K. 582.)

(5189) Several owners. § 124. When any offense shall be committed upon, or in relation to, any personal property belonging to several partners or owners, the indictment or information for such offense shall be deemed sufficient if it allege such property to belong to any one or more of such partners or owners, without naming all of them. [G. S. 1868, ch. 82, § 124, Oct. 31.]

(State v. Fockler, 22 K. 542.)

(5190) Against accessory. § 125. An indictment or information against an accessory to a felony may be found in any county where the offense of such accessory shall have been committed, notwithstanding the principal offense may have been committed in another county; and the like proceedings shall be had therein, in all respects, as if the principal offense had been committed in the same county. [G. S. 1868, ch. 82, § 125, Oct. 31.]

(5191) Warrant. § 126. When an indictment is found, the court may direct the clerk to issue a warrant returnable forthwith. If no order is made, the clerk must issue a warrant upon all indictments within twenty days after the close of the term. Warrants shall be issued upon information, as soon as practicable after their filing. The clerk, at the time of issuing a warrant, must issue a summons for the witnesses. [G. S. 1868, ch. 82, § 126, Oct. 31.]

(Jennings v. State, 13 K. 80; State v. Babbitt, 32 K. 253; State v. Brooks, 33 K. 708.)

(5192) Issue and service. § 127. The warrant shall issue to the sheriff of the county where the indictment or information is filed, unless the prosecuting attorney directs it to be issued to some other county. Warrants may issue to different counties at the same time. The sheriff must execute the warrant and serve the summons immediately upon delivery to him. [G. S. 1868, ch. 82, § 127, Oct. 31.]

(5193) Returnable after term. § 128. When writs of attachment are returnable after the close of the term, the court must direct the amount of bail to be required of the defendant. [G. S. 1868, ch. 82, § 128, Oct. 31.]

(5194) Arrest. § 129. Arrest is the taking of a person into custody, that he may be held to answer for a public offense. [G. S. 1868, ch. 82, § 129, Oct. 31.]

(5195) How made. § 130. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer. [G. S. 1868, ch. 82, § 130, Oct. 31.]

(5196) Authority. § 131. The officer must inform the defendant that he acts under authority of a warrant, and must also show the warrant, if required. [G. S. 1868, ch. 82, § 131, Oct. 31.]

(*Prell v. McDonald*, 7 K. 426; *State v. Mowry*, 37 K. 369.)

(5197) Power of officer. § 132. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [G. S. 1868, ch. 82, § 132, Oct. 31.]

(5198) Arrest; escape, etc. § 133. An arrest may be made on any day, or at any time of the day or night. If any person arrested escape, or be rescued, the person from whose custody he made his escape or was rescued may immediately pursue and retake him, at any time and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as is given thereon in cases of arrest. [G. S. 1868, ch. 82, § 133, Oct. 31.]

(5199) Bailable offenses. § 134. All offenses are bailable by sufficient sureties, except murder, when the proof is evident or the presumption great. [G. S. 1868, ch. 82, § 134, Oct. 31.]

(*In re Mallison*, 36 K. 725.)

(5200) Amount of bail. § 135. The court, at each term, must order the amount in which persons charged by indictment or information are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereupon indorse the amount of bail to be required; or, if there is no such judge in the county, the clerk may fix the amount of bail. [G. S. 1868, ch. 82, § 135, Oct. 31.]

(*Morrow v. State*, 6 K. 222; *State v. Schweiter*, 27 K. 499; *In re Eddy*, 40 K. 592.)

(5201) Recognizance. § 136. All recognizances required or authorized to be taken in any criminal proceeding, or in any proceeding of a similar nature, shall be in writing, and shall be subscribed by the parties to be bound thereby. [G. S. 1868, ch. 82, § 136, Oct. 31.]

(*Gay v. State*, 7 K. 394; *McLaughlin v. State*, 10 K. 581; *Tillson v. State*, 29 K. 457; *Madden v. State*, 35 K. 146; *State v. Longton*, 35 K. 375; *State v. Roberts*, 37 K. 437; *Junction City v. Keefe*, 40 K. 275.)

(5202) Recorded. § 137. All recognizances taken in a court of record shall be recorded in a book to be kept for that purpose, to be called the "Recognizance docket." [G. S. 1868, ch. 82, § 137, Oct. 31.]

(5203) Condition complied with. § 138. When the condition of the recognizance has been complied with, that fact shall be entered on the record of the same by the clerk. [G. S. 1868, ch. 82, § 138, Oct. 31.]

(5204) Of sureties. § 139. Sureties in recognizances in criminal cases and proceedings shall be residents of the state, and one at least a resident of the county in which the cause or proceeding is pending, and shall be worth, over and above the

amount exempt from execution and the amount of their debts and liabilities, the sum in which bail is required. [G. S. 1868, ch. 82, § 139, Oct. 31.]

(5205) Examination. § 140. The person or persons offered as sureties shall be examined on oath in regard to their qualifications as sureties, and any officer authorized to take bail is authorized to administer the oath. Other proof may be taken in regard to the sufficiency of the sureties. [G. S. 1868, ch. 82, § 140, Oct. 31.]

(5206) Not taken. § 141. No person shall be taken as surety unless the court, magistrate or officer is satisfied, from proof and examination on oath, of the sufficiency of such person according to the requisitions of the preceding sections. [G. S. 1868, ch. 82, § 141, Oct. 31.]

(5207) Several persons. § 142. Where more than one person is offered as bail, they shall be deemed sufficient if in the aggregate they possess the necessary qualifications. [G. S. 1868, ch. 82, § 142, Oct. 31.]

(5208) Sheriff take bail. § 143. A sheriff or other officer arresting a person under a warrant or other process, or holding a person in custody under a mittimus, in or upon which warrant or mittimus it shall appear that the person is to be admitted to bail in a specified sum, may take the bail and discharge the person from actual custody. [G. S. 1868, ch. 82, § 143, Oct. 31.]

(*Roberts v. State*, 34 K. 151; *Bloss v. State*, 11 K. 462.)

(5209) Recognizance certified. § 144. Every recognizance taken by any judge, justice of the peace, sheriff or other officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the recognizance docket, and from the time of filing it has the same effect as if taken in open court. [G. S. 1868, ch. 82, § 144, Oct. 31.]

(*Barkley v. State*, 15 K. 99; *Jennings v. State*, 13 K. 80; *Sherman v. State*, 4 K. 570.)

(5210) Deposit. § 145. The defendant may, in the place of giving bail, deposit with the clerk of the court to which the

defendant is held to answer the sum of money mentioned in the order; and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody. [G. S. 1868, ch. 82, § 145, Oct. 31.]

(Morrow v. State, 6 K. 222.)

(5211) Return of. § 146. If the money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall give sufficient bail, or shall surrender himself in open court, or to the sheriff, as provided in this act, or be in any manner legally discharged, the clerk shall order a return of the deposit. [G. S. 1868, ch. 82, § 146, Oct. 31.]

(5212) Discharge. § 147. Any surety in a recognizance may, by leave of the court, after default, and either before or after process has been issued against him, pay to the county treasurer or to the clerk of the court the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged. [G. S. 1868, ch. 82, § 147, Oct. 31.]

(5213) Surrender principal. § 148. When the surety desires to surrender his principal, he may produce a copy of the recognizance from the clerk, by virtue of which the bail or any person authorized by him may take the principal in any county within the state. [G. S. 1868, ch. 82, § 148, Oct. 31.]

(Gay v. State, 7 K. 403; State v. Beebe, 13 K. 589.)

(5214) Surrender after forfeiture. § 149. The bail at any time before final judgment against him upon a forfeited recognizance, may surrender his principal in open court or to the sheriff, and upon payment of all costs, and upon presenting a satisfactory excuse for the failure of his principal to comply with the conditions of said recognizance, may thereupon be discharged from any further liability thereon. [G. S. 1868, ch. 82, § 149, as amended by Laws 1889, ch. 127, § 1, March 21.]

(5215) Must accept surrender. § 150. The bail must deliver a certified copy of the recognizance to the sheriff, with the principal; and the sheriff must accept the surrender of the

principal, and acknowledge it in writing. [G. S. 1868, ch. 82, § 150, Oct. 31.]

(*State v. Beebe*, 13 K. 589.)

(5216) Other bail. § 151. Any defendant so surrendered may give other bail, or remain in custody until discharged by due course of law. [G. S. 1868, ch. 82, § 151, Oct. 31.]

(5217) Neglect to appear. § 152. If, without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required according to the condition of his recognizance, the court must direct the fact to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited. [G. S. 1868, ch. 82, § 152, Oct. 31.]

(*Morrow v. State*, 6 K. 222; *Ingram v. State*, 10 K. 630; *Barkley v. State*, 15 K. 99; *In re Dill*, 32 K. 668; *Norton v. State*, 40 K. 670.)

(5218) Action against bail. § 153. The prosecuting attorney may, at any time after the adjournment of court, proceed by action against the bail upon the recognizance. Said action shall be governed by the rules of civil pleading, as far as applicable. [G. S. 1868, ch. 82, § 153, Oct. 31.]

(*Madden v. State*, 35 K. 146; *Tillson v. State*, 29 K. 453; *Swerdsfeger v. State*, 21 K. 475, 476; *Morehead v. State*, 20 K. 636; *McLaughlin v. State*, 17 K. 285, 286; *Weatherwax v. State*, 17 K. 427; *Rheinhardt v. State*, 14 K. 318; *Jennings v. State*, 13 K. 80; *Morrow v. State*, 5 K. 563.)

(5219) Irregularity, etc. § 154. No action upon a recognizance shall be defeated, nor shall judgment thereon be arrested, on account of any defect of form, omission of recital, condition of undertaking therein, neglect of the clerk or magistrate to note or record the default of any principal or surety at the term or time when such default shall happen, or of any other irregularity, so that it may be made to appear that the defendant was legally in custody, charged with a public offense, that he was discharged therefrom by reason of the giving of the recognizance, and that it can be ascertained from the recognizance that the sureties undertook that the defendant should appear

before a court or magistrate for examination or trial for such offense. [G. S. 1868, ch. 82, § 154, Oct. 31.]

(Madden v. State, 35 K. 146; Roberts v. State, 34 K. 151; Tillson v. State, 29 K. 457; State v. Terrell, 29 K. 563; State v. Kurtz, 27 K. 223; State v. Crissy, 18 K. 210; Barkley v. State, 15 K. 99; Jennings v. State, 13 K. 80; McLaughlin v. State, 10 K. 581; Ingram v. State, 10 K. 630; Gay v. State, 7 K. 394; Sherman v. State, 4 K. 570.)

(5220) Forfeited recognizance. § 155. Any recognizance forfeited by the prisoner is collectible upon execution, although he is afterward arrested on the original charge, unless remitted by the court for cause shown. [G. S. 1868, ch. 82, § 155, Oct. 31.]

(5221) Abscond; continuance. § 156. If any person charged with a criminal offense abscond or flee from justice, or cannot be found to be served with process, or, being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from term to term without issuing process on the indictment; and such process may be issued at any time on the application of the prosecuting attorney. [G. S. 1868, ch. 82, § 156, Oct. 31.]

(5222) Tried, when. § 157. All indictments and informations shall be tried at the first term at which the defendant appears, unless the same be continued for cause. If the defendant appear or is in custody at the term at which the indictment or information is found, such indictment or information shall be tried at that term, unless continued for cause. [G. S. 1868, ch. 82, § 157, Oct. 31.]

(*In re* Millington, 24 K. 214; *In re* Scrafford, 21 K. 735; State v. Bohan, 19 K. 28; State v. Winner, 17 K. 306; Butler v. McMillen, 13 K. 391.)

(5223) Copy furnished prisoner. § 158. It shall be the duty of the clerk of the court in which an indictment or information against any person for a capital offense may be pending, whenever the defendant shall be in custody or held by recognizance to answer thereto, to make out a copy of such indictment or information, and cause the same to be delivered to the defendant or his counsel at least forty-eight hours before he shall be arraigned on such indictment or information. If the defendant pleads and goes to trial without objecting for the want of

such copy, the neglect of duty by the clerk will not be sufficient ground to set aside the verdict. [G. S. 1868, ch. 82, § 158, Oct. 31.]

(5224) In other cases. § 159. Every person who shall be charged with any offense not capital, who shall have been arrested or held by recognizance to appear and answer to such charge, shall, on demand, and on payment of the fees allowed by law therefor, be entitled to a copy of the indictment or information, and all indorsements thereon. [G. S. 1868, ch. 82, § 159, Oct. 31.]

(5225) Assign counsel. § 160. If any person about to be arraigned upon indictment or information for felony be without counsel to conduct his defense, and be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours. [G. S. 1868, ch. 82, § 160, Oct. 31.]

(5226) Plea. § 161. When any person shall be arraigned upon any indictment or information, it shall not be necessary to ask him how he will be tried; and if he deny the charge in any form, or require a trial, or if he refuse to plead or answer, and in all cases when he does not confess the indictment or information to be true, a plea of not guilty shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty. [G. S. 1868, ch. 82, § 161, Oct. 31.]

(Territory v. Reyburn, McC. 134; Montgomery v. State, 3 K. 263; State v. Lewis, 10 K. 157; State v. Cassady, 12 K. 550; State v. Ingram, 16 K. 14.)

(5227) Abatement. § 162. No plea in abatement, or other dilatory plea to an indictment or information, shall be received by any court, unless the party offering such plea shall prove the truth thereof by affidavit, or some other evidence. [G. S. 1868, ch. 82, § 162, Oct. 31.]

(Montgomery v. State, 3 K. 264; State v. Finley, 8 K. 370; State v. Smith, 13 K. 274; State v. Tennison, 39 K. 726.)

(5228) Of matters occurring in another county. § 163. When any matters shall be pleaded to an indictment or information as having occurred in any other county than that

in which the indictment was found or the information filed, it shall be tried in the same manner as if it had been alleged to have occurred in the same county where such plea is tendered. [G. S. 1868, ch. 82, § 163, Oct. 31.]

(5229) Subpœnas, etc. § 164. Every person indicted or presented for a criminal offense shall be entitled to subpœnas and compulsory process for witnesses in like manner and under like circumstances as parties in civil cases. [G. S. 1868, ch. 82, § 164, Oct. 31.]

(5230) Attendance of witnesses, etc. § 165. All courts of record having criminal jurisdiction shall have power to compel the attendance of witnesses in criminal cases from any county in the state, to testify either on the part of the state or for the defendant. [G. S. 1868, ch. 82, § 165, Oct. 31.]

(5231) Subpœnas, service, etc. § 166. Subpœnas and other compulsory process to compel the attendance of witnesses in criminal cases shall be issued and served in the same manner and the disobedience thereof punished the same as in civil cases; and every delinquent witness shall be liable to the party at whose instance he was summoned in the same manner and to the same extent as in cases of witnesses summoned in a civil action. [G. S. 1868, ch. 82, § 166, Oct. 31.]

(5232) The same; return. § 167. A subpœna may be directed to the sheriff of the county in which the witness resides or may be found; and in such case the said sheriff shall make immediate service, and speedy return thereof by mail to the court from which it issued, with the time and manner of service indorsed thereon, and the distance by the most direct route of common travel from his residence to the place of such service. [G. S. 1868, ch. 82, § 167, Oct. 31.]

(5233) Tender not necessary. § 168. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the state or on the part of the defendant; but such witness shall be bound to attend, and be

liable for his non-attendance, in the same manner as if the fees allowed to witnesses had been duly paid to him. [G. S. 1868, ch. 82, § 168, Oct. 31.]

(5234) Deposition. § 169. When any issue of fact is joined in any criminal case, and any material witness for the defendant resides out of the state, or, residing within the state, is pregnant, sick, or infirm, or is bound on a voyage, or is about to leave this state, such defendant may apply to the court in which the case is pending for a commission to examine such witness upon interrogatories thereto annexed, and such court may grant the same upon the like proof and on the like terms as provided by law in civil cases. [G. S. 1868, ch. 82, § 169, Oct. 31.]

(5235) Executed and returned. § 170. Interrogatories, to be annexed to such commission, shall be settled and such commission shall be issued, executed and returned in the manner prescribed by law in respect to commissions in civil cases; and the depositions taken thereon and returned shall be read in the like cases and with the like effect as in civil actions. [G. S. 1868, ch. 82, § 170, Oct. 31.]

(5236) Of defendant. § 171. The defendant in any criminal cause may also have witnesses examined on his behalf conditionally upon a commission issued by the clerk of a court in which the cause is pending in the same cases, and upon the like notice to the prosecuting attorney and with the like effect in all respects as is provided by law in civil actions. [G. S. 1868, ch. 82, § 171, Oct. 31.]

(5237) Change of venue. § 172. Whenever any indictment or information for a criminal offense shall be pending in any court having jurisdiction thereof, against the judge thereof, the same shall be removed to the court of some county where some other judge may preside, upon the order in writing of any judge of the supreme court. [G. S. 1868, ch. 82, § 172, Oct. 31.]

(State v. Knapp, 40 K. 148; City of Emporia v. Volmer, 12 K. 622.)

(5238) In other cases. § 173. When any indictment or criminal prosecution shall be pending in any district court, the

same shall be removed by the order of such court or judge thereof to the district court of some county in a different district, in either of the following cases: *First*, When the judge of the court in which the cause is pending is near of kin to the defendant, by blood or marriage; *second*, where the offense charged is alleged to have been committed against the person or property of such judge or some person near of kin to him; *third*, where the judge is in anywise interested or prejudiced, or shall have been counsel in the cause. [G. S. 1868, ch. 82, § 173, Oct. 31.]

(State v. Knadler, 40 K. 359; State v. Bohan, 19 K. 28; State v. Winner, 17 K. 298; State v. Potter, 16 K. 80; Peyton's Appeal, 12 K. 398; City of Emporia v. Volmer, 12 K. 622, 627.)

(5239) To another county. § 174. Any criminal cause pending in any district court may be removed, by the order of such court or the judge thereof, to the district court of another county in the same district whenever it shall appear in the manner hereinafter provided that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial cannot be had therein. [G. S. 1868, ch. 82, § 174, Oct. 31.]

(State v. Rhea, 25 K. 576; State v. Adams, 20 K. 311; State v. Potter, 16 K. 80; State v. Bohan, 15 K. 407; State v. Horne, 9 K. 119; Smith v. State, 1 K. 365.)

(5240) To another district. § 175. Whenever it shall appear, in the manner hereinafter provided, that the inhabitants of the entire district are so prejudiced against the defendant that a fair trial cannot be had therein, the cause shall, by order of the court or judge, be removed to another district, in which such prejudice is not alleged to exist. [G. S. 1868, ch. 82, § 175, Oct. 31.]

(5241) Removal. § 176. Such order of removal, as specified in the two preceding sections, shall be made on the application of the defendant; or, where the defendant is under the age of sixteen, on application of the parent or guardian of such infant; and if the infant has no parent or guardian, then on the application of any two respectable citizens of the county where the cause is at issue. [G. S. 1868, ch. 82, § 176, Oct. 31.]

(5242) Petition. § 177. In the petition for a change of venue, the applicant shall set forth the facts upon which the application is made, and the truth of the allegations in the petition shall be made to appear, by affidavits, to the satisfaction of the court. Notice of such application must be given to the county attorney, who may resist such application by counter affidavits. [G. S. 1868, ch. 82, § 177, Oct. 31.]

(State v. Furbeck, 29 K. 533; State v. Potter, 16 K. 80; Smith v. State, 1 K. 365.)

(5243) Without application. § 178. Whenever it shall be within the knowledge of a court or judge that facts exist which would entitle a defendant to the removal of any criminal cause, on his application, such judge or court may make an order for such removal, without any application by the party for that purpose. [G. S. 1868, ch. 82, § 178, Oct. 31.]

(5244) Order shall state. § 179. Every order for a removal of any cause, under the foregoing provisions, shall state whether the same is made on the application of the party or on facts within the knowledge of the court or judge, and shall specify the cause of removal, and designate the county to which the cause is removed. [G. S. 1868, ch. 82, § 179, Oct. 31.]

(State v. Potter, 16 K. 80.)

(5245) Not made. § 180. No order for the removal of any cause shall be made on the application of the defendant, unless such application be made during the term of the court at which the indictment is found: *Provided*, Said defendant be in custody or on recognizance; and if not in custody or held to bail, then the application may be made at or before the first term after the defendant shall have been arrested, and not thereafter, except as provided in the next succeeding section. [G. S. 1868, ch. 82, § 180, Oct. 31.]

(5246) After continuance. § 181. If the defendant will, in addition to the oath requisite in ordinary and timely applications, swear that the facts on which he grounds his application have first come to his knowledge since the last preceding continuance of the cause, the court shall grant a change of

venue, although such application shall be made at the term subsequent to that at which the prisoner was likely to be arraigned. [G. S. 1868, ch. 82, § 181, Oct. 31.]

(Smith v. State, 1 K. 365.)

(5247) The order. § 182. Every order for the removal of a cause, if made by the court, shall be entered on the minutes; if made by the judge out of court, shall be in writing and signed by him, and shall be filed by the clerk, with the petition, if any, as a part of the record in the cause. [G. S. 1868, ch. 82, § 182, Oct. 31.]

(5248) Recognizance. § 183. When such order shall be made, the defendant, if not in confinement or custody, shall enter into a recognizance, with sufficient sureties, for his appearance to answer the charge in the court to which the cause is to be removed, at the next term thereof, and not to depart such court without leave. [G. S. 1868, ch. 82, § 183, Oct. 31.]

(5249) How taken, etc. § 184. Such recognizance may be taken by the court or judge making the order, or by any court or officer authorized by law to let to bail after indictment or information, and, when taken out of the court in which the cause is pending, shall be filed forthwith with the clerk thereof. [G. S. 1868, ch. 82, § 184, Oct. 31.]

(5250) Order not effectual. § 185. No order for the removal of a cause shall be effectual in the case of any defendant, not in confinement or custody, unless a recognizance, taken as herein directed, be entered into in open court, or delivered with the order, and filed with the clerk of the court, nor unless such order be delivered before the jury is sworn in the cause. [G. S. 1868, ch. 82, § 185, Oct. 31.]

(5251) Remove body. § 186. If the defendant be in actual custody or confinement, the court or judge granting the order of removal shall also make an order commanding the sheriff to remove the body of the defendant to the jail of the county to which the cause is to be removed, and there deliver him to the keeper of such jail, together with the warrant or pro-

cess by virtue of which he is imprisoned or held. [G. S. 1868, ch. 82, § 186, Oct. 31.]

(State v. Potter, 16 K. 81.)

(5252) Duty of sheriff. § 187. The sheriff shall obey such order without unnecessary delay, and shall indorse on the commitment or process by virtue of which the prisoner was in his custody the reason of the change of custody, and shall deliver such warrant with the prisoner to the keeper of the jail of the proper county, who shall give the sheriff a receipt therefor and take charge of and keep the prisoner in the same manner as if he had been originally committed to such jail. [G. S. 1868, ch. 82, § 187, Oct. 31.]

(5253) Transcript. § 188. Whenever any order shall be made for the removal of any cause under the foregoing provisions, the clerk of the court in which the same is pending shall make out a full transcript of the record and proceedings in the cause, including the order of removal, the petition therefor, if any, and the recognizance of the defendant and of all witnesses, and shall transmit the same, duly certified under the seal of the court, to the clerk of the court to which the removal is ordered. [G. S. 1868, ch. 82, § 188, Oct. 31.]

(State v. Goodwin, 33 K. 538; State v. Riddle, 20 K. 711.)

(5254) To be filed. § 189. On the receipt of such transcript by the clerk of the court to which any cause is removed, he shall file the same as a record of his court, and the same proceedings shall be had in the cause in such court, and in the same manner in all respects, as if the same had originated therein. [G. S. 1868, ch. 82, § 189, Oct. 31.]

(State v. Potter, 16 K. 81.)

(5255) If not received. § 190. If such transcript shall not be transmitted, or shall not be received at or before the first term of the court to which the cause is ordered to be removed, or if such transcript shall be lost or destroyed, the cause shall not by reason thereof be discontinued; but such transcript, or another in lieu thereof, may be transmitted and filed, as required by this act, at or before the next succeeding term of such

court, and proceedings thereon shall be had as if no such failure or loss had happened. [G. S. 1868, ch. 82, § 190, Oct. 31.]

(5256) Defendant and witnesses. § 191. The defendant, and all witnesses and others who shall have entered into any recognizance to attend the trial of such cause having notice of the removal thereof, shall be bound to attend, at the time and place of trial, in the county to which the cause is removed; and a failure to do so shall be deemed a breach of the recognizance. [G. S. 1868, ch. 82, § 191, Oct. 31.]

(5257) Order of removal; notice. § 192. When the order of removal is made in open court, it shall be deemed a notice to every person who shall have entered into a recognizance to appear at such term of court; in other cases, the notice shall be in writing, signed by the prosecuting attorney or clerk of the court, and served on the person so recognized, in the manner provided by law for serving notices. [G. S. 1868, ch. 82, § 192, Oct. 31.]

(5258) Costs. § 193. The costs and expenses necessarily incurred in the removal of any such cause, under the foregoing provisions, shall be adjusted and allowed by the court wherein the cause is tried, and shall be taxed as other costs in such cause. [G. S. 1868, ch. 82, § 193, Oct. 31.]

(5259) Neglect of clerk; penalty. § 194. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by action in the name and to the use of the state. [G. S. 1868, ch. 82, § 194, Oct. 31.]

(5260) Several defendants. § 195. Where there are several defendants in any indictment or information, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried, and all proceedings had against them, in the county in which the case is pending, in all respects as if no order of removal had been made as to any defendant. [G. S. 1868, ch. 82, § 195, Oct. 31.]

(5261) On continuance, witnesses recognized. § 196. Whenever a criminal case shall be continued, all the witnesses in attendance shall be called by the court, and as many of them as the parties may desire shall be required to enter into recognizance for their appearance at the next term, at which such case shall be set for trial; and if any such witness shall fail to appear in said court when so called for the purpose of being recognized, such witness shall forfeit all his fees as witness in such cause, and may be compelled so to appear, by attachment. [G. S. 1868, ch. 82, § 196, Oct. 31.]

(State v. Lane, 11 K. 458.)

(5262) Trial. § 197. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in cases of felonies; all other trials must be by jury, to be selecten, summoned and returned as prescribed by law. [G. S. 1868, ch. 82, § 197, Oct. 31.]

(State v. Yordl, 30 K. 221; City of Olathe v. Adams, 15 K. 391; State v. Cutler, 13 K. 132.)

(5263) Peremptory challenges. § 198. The defendant, in every indictment or information, shall be entitled to a peremptory challenge of jurors, in the following cases, as follows: *First*, If the offense charged is punishable with death or by imprisonment in the penitentiary not less than for life, to the number of twelve, and no more; *second*, if the offense be punishable by like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight, and no more; *third*, in any other case punishable by imprisonment in the penitentiary, to the number of six, and no more; *fourth*, in cases not punishable with death or imprisonment in the penitentiary, to the number of four, and no more. [G. S. 1868, ch. 82, § 198, Oct. 31.]

(State v. Gould, 40 K. 258; State v. Whisner, 35 K. 271; A. T. & S. F. Rld Co. v. Davis, 34 K. 199; Trembly v. State, 20 K. 116; State v. Skinner, 34 K. 256; State v. Drake, 33 K. 151; State v. Bailey, 32 K. 83; State v. Durein, 29 K. 688.)

(5264) State may challenge. § 199. In all criminal trials, the state may challenge, peremptorily, half the number

of jurors allowed the defendant by the preceding section. [G. S. 1868, ch. 82, § 199, Oct. 31.]

(5265) Incompetent juror. § 200. If the offense charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty, shall not serve as a juror. [G. S. 1868, ch. 82, § 200, Oct. 31.]

(5266) The same. § 201. No person who believes the punishment fixed by the law to be too severe for the offense, or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror. [G. S. 1868, ch. 82, § 201, Oct. 31.]

(5267) The same. § 202. Where any indictment or information alleges an offense against the person or property of another, neither the injured party, nor any person of kin to him, shall be a competent juror on the trial of such indictment or information; nor shall any person of kin to the prosecutor or defendant, in any case, serve as a juror on the trial thereof; and either party shall be entitled to challenge any juror for the same causes as are allowed in civil cases. [G. S. 1868, ch. 82, § 202, Oct. 31.]

(5268) The same. § 203. No person who was a member of the grand jury or inquest by which any indictment or presentment was found in any cause, shall serve as a petit juror on the trial of such cause. [G. S. 1868, ch. 82, § 203, Oct. 31.]

(5269) The same. § 204. No witness in any criminal case shall be sworn as a juror therein, if challenged for that cause before he is sworn; and if any juror shall know anything relative to the matter in issue, he shall disclose the same in open court. [G. S. 1868, ch. 82, § 204, Oct. 31.]

(5270) Expression of opinion. § 205. It shall be a good cause of challenge to a juror that he has formed or expressed an opinion on the issue or any material fact to be tried. [G. S. 1868, ch. 82, § 205, Oct. 31.]

(State v. Peterson, 38 K. 204; State v. Miller, 29 K. 43; State v. Wells, 28 K. 321; State v. Spaulding, 24 K. 1; State v. Bancroft, 22 K. 170; State v. Brown, 15 K. 400; State v. Crawford, 11 K. 32; State v. Medlicott, 9 K. 257; Roy v. State, 2 K. 405; Morton v. State, 1 K. 468.)

(5271) Challenge for cause. § 206. All challenges for cause may be tried by the court, on the oath of the person challenged, or on other evidence, and such challenges shall be made before the jury is sworn; but if the cause of challenge be discovered after the jury is sworn, and before any part of the evidence is delivered, he may be discharged or not, in the discretion of the court. [G. S. 1868, ch. 82, § 206, Oct. 31.]

(State v. Furbeck, 29 K. 532; State v. Jackson, 27 K. 581.)

(5272) Presence of defendant. § 207. No person indicted or informed against for a felony can be tried unless he be personally present during the trial; nor can any person indicted or informed against for any other offense be tried unless he be present either personally or by his counsel. [G. S. 1868, ch. 82, § 207, Oct. 31.]

(State v. Myrick, 38 K. 238; State v. Wilson, 24 K. 189; State v. Adams, 20 K. 312; State v. Potter, 16 K. 80.)

(5273) Impaneling jury, etc. § 208. The proceedings prescribed by law in civil cases in respect to the impaneling of jurors, the keeping them together, and the manner of rendering their verdict, shall be had upon trials on indictments and informations for criminal offenses, except in cases otherwise provided by statute. [G. S. 1868, ch. 82, § 208, Oct. 31.]

(State v. Baldwin, 36 K. 1; State v. Taylor, 36 K. 329; State v. Skinner, 34 K. 256; State v. Muir, 32 K. 481; State v. White, 19 K. 445.)

(5274) Witnesses, etc. § 209. The provisions of law in civil cases relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and affirmations, and proceedings as for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable thereto, subject to the provisions contained in any statute. [G. S. 1868, ch. 82, § 209, Oct. 31.]

(State v. Johnson, 40 K. 266; State v. Peterson, 38 K. 204; State v. Taylor, 36 K. 329; State v. Bryan, 34 K. 63; State v. Curtis, 29 K. 388; State v. Stackhouse, 24 K. 445, 446; State v. Roark, 23 K. 147; State v. Brown, 22 K. 222; State v. Benson, 22 K. 471; State v. Cole, 22 K. 474; State v. Brown, 21 K. 38; State v. Petty, 21 K. 54; State v. Buffington, 20 K. 599; State v. Riddle, 20 K. 711; State v. White, 19 K. 445; State v. Howard, 19 K. 507; *In re Pryor*,

18 K. 72; *State v. Cook*, 17 K. 392; *State v. Ingram*, 16 K. 14; *Davenport v. Ogg*, 15 K. 366; *State v. Folwell*, 14 K. 105; *State v. Gurnee*, 14 K. 111; *State v. Kellerman*, 14 K. 135; *State v. Smithers*, 14 K. 629; *State v. Potter*, 13 K. 414; *State v. Horne*, 9 K. 119; *State v. Herold*, 9 K. 194; *State v. Medlicott*, 9 K. 257; *State v. Reddick*, 7 K. 143.)

(5275) New trials, etc. § 210. Verdicts may be set aside, and new trials awarded, on the application of the defendant, and continuances may be granted to either party, in criminal cases, for like causes and under the like circumstances as in civil cases. [G. S. 1868, ch. 82, § 210, Oct. 31.]

(*State v. Gould*, 40 K. 258; *State v. Smith*, 35 K. 618; *State v. Burwell*, 34 K. 312; *State v. McCool*, 34 K. 613, 617; *McLean v. State*, 28 K. 372; *State v. Plowman*, 28 K. 569; *State v. Rhea*, 25 K. 576; *State v. Roark*, 23 K. 147; *State v. Hagan*, 22 K. 490; *State v. Adams*, 20 K. 311; *State v. Winner*, 17 K. 306; *State v. White*, 17 K. 488; *State v. Kellerman*, 14 K. 135; *State v. Dickson*, 6 K. 209; *Thompson v. State*, 5 K. 159.)

(5276) Treason. § 211. In trials for treason, no evidence shall be given of an overt act that is not expressly laid in the indictment or information; and no conviction shall be had upon any indictment or information for such offense, unless one or more overt acts be expressly alleged therein. [G. S. 1868, ch. 82, § 211, Oct. 31.]

(5277) Conspiracy. § 212. In trials for conspiracy, in those cases where an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment or information, and proved on the trial; but other overt acts, not alleged, may be given in evidence on the part of the prosecution. [G. S. 1868, ch. 82, § 212, Oct. 31.]

(*State v. Miller*, 35 K. 328; *State v. Adams*, 20 K. 311; *State v. Winner*, 17 K. 298.)

(5278) Rape. § 213. Proof of actual penetration into the body shall be sufficient proof to sustain an indictment or information for rape, or for the crime against nature. [G. S. 1868, ch. 82, § 213, Oct. 31.]

(5279) Existence, etc., of corporation. § 214. If, on trial or other proceeding in a criminal cause, the existence, constitution, or powers of any banking company or corporation

shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the state, government or country by which such corporation was created. [G. S. 1868, ch. 82, § 214, Oct. 31.]

(State v. Thompson, 23 K. 338.)

(5280) Competent witnesses. § 215. No person shall be rendered incompetent to testify in criminal causes by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution; or by reason of his being the person on trial or examination; or by reason of being the husband or wife of the accused; but any such facts may be shown for the purpose of affecting his or her credibility: *Provided*, That no person on trial or examination, nor wife or husband of such person, shall be required to testify except as a witness on behalf of the person on trial or examination: *And further provided*, That the neglect or refusal of the person on trial to testify, or of a wife to testify in behalf of her husband, shall not raise any presumption of guilt, nor shall that circumstance be referred to by any attorney prosecuting in the case, nor shall the same be considered by the court or jury before whom the trial takes place. [G. S. 1868, ch. 82, § 215, as amended by Laws 1871, ch. 118, § 1, March 2.]

(State v. Pfefferle, 36 K. 90; State v. Shenkle, 36 K. 43; State v. Miller, 35 K. 328; City of Topeka v. Myers, 35 K. 554; State v. Hughes, 35 K. 626; State v. Smith, 35 K. 618; State v. Skinner, 34 K. 256; State v. Mosley, 31 K. 355; State v. Balch, 31 K. 465; State v. McKlinney, 31 K. 572; State v. Yordl, 30 K. 221; State v. Petty, 21 K. 54; State v. Buffington, 20 K. 599; State v. Horne, 9 K. 119; State v. McCord, 8 K. 232; Campbell v. State, 3 K. 488.)

(5281) Refusal. § 215a. If the accused shall not avail himself of his right to testify in any case, it shall not be construed to affect his innocence or guilt. [Laws 1871, ch. 118, § 2, March 2.]

(5282) Bribery. § 215b. Any person receiving a bribe shall be a competent witness against the person or persons who

gave or procured to be given said bribe, in any criminal prosecution against the party who gave or caused to be given said bribe. [Laws 1869, ch. 43, § 2, March 11.]

(5283) The same; exception. § 215c. That no person testifying before any court of this state, or before any committee appointed by the senate or house of representatives or by both of said houses, in relation to any bribery or corruption in any election held under the law of the state or the United States, shall be deemed to criminate himself, nor shall he be held to answer before any court of this state nor before either house of the legislature for any complicity on his part in the bribery or corruption concerning which he may testify: *Provided*, That the provisions of this act shall not apply to any person who has by bribery or corruption obtained or attempted to obtain, in whole or in part, his election or appointment to any office of honor, trust or profit under the laws of the state or of the United States. [Laws 1872, ch. 211, § 1, February 29.]

(5284) Genuineness of note, etc. § 216. Persons of skill, or experts, may be called to testify as to the genuineness of a note, bill, draft, certificate of deposit, or other writing; but three witnesses, at least, shall be required to prove the fact, except in case of a larceny thereof the single evidence of the president, cashier or teller of the bank purporting to have issued the same, or the maker thereof, may be received as sufficient. [G. S. 1868, ch. 82, § 216, Oct. 31.]

(State v. Foster, 30 K. 365.)

(5285) Gambling. § 217. Any person called as a witness to testify against another for gaming shall be a competent witness to prove the offense, although he may have been concerned as a party, and shall be compelled to testify as other witnesses; but he shall not be liable to punishment in any such case. [G. S. 1868, ch. 82, § 217, Oct. 31.]

(5286) Jointly charged. § 218. When two or more defendants are jointly charged with any felony, any one defendant, requiring it, shall be tried separately; in other cases defendants

jointly charged shall be tried separately or jointly, in the discretion of the court. [G. S. 1868, ch. 82, § 218, Oct. 31.]

(5287) Bill of exceptions. § 219. On the trial of any indictment or information for a criminal offense, exceptions to any decision of the court may be made, in the same cases and manner provided by law in civil cases; and bills of exception shall be settled, signed and filed as now allowed by law in civil actions; and the same proceedings may be had to compel or procure the signing and sealing of such bills, and the return thereof, as in civil cases. [G. S. 1868, ch. 82, § 219, Oct. 31.]

(*State v. Fry*, 40 K. 311; *State v. Smith*, 38 K. 194; *State v. McClintock*, 37 K. 39, 40; *State v. Dorsey*, 37 K. 227; *State v. Carr*, 37 K. 421; *State v. Baldwin*, 36 K. 1; *State v. English*, 34 K. 629; *State v. Wilgus*, 32 K. 126; *State v. Schoenewald*, 26 K. 288; *State v. Cole*, 22 K. 474; *Pattee v. Parkinson*, 18 K. 465; *State v. Bohan*, 19 K. 28; *State v. Folwell*, 14 K. 105.)

(5288) Entitled to discharge. § 220. If any person under indictment or information for any offense, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense which shall be held after such indictment found or information filed, he shall be entitled to be discharged so far as relates to the offense for which he was committed, unless the delay shall happen on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term. [G. S. 1868, ch. 82, § 220, Oct. 31.]

(*In re McMicken*, 39 K. 406; *In re Scrafford*, 21 K. 735.)

(5289) Person out on bail. § 221. If any person under indictment or information for any offense, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending which shall be held after such indictment found or information filed, he shall be entitled to be discharged so far as relates to such offense, unless the delay happen on his application, or be occasioned by the want of time to try such cause at such third term. [G. S. 1868, ch. 82, § 221, Oct. 31.]

(*In re Edwards*, 35 K. 99.)

(5290) Cause continued. § 222. If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied that there is material evidence on the part of the state which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued to the next term, and the prisoner remanded, or admitted to bail, as the case may require. [G. S. 1868, ch. 82, § 222, Oct. 31.]

(5291) Misnomer. § 223. If a defendant be indicted or prosecuted by a wrong name, unless he declare his true name before pleading he shall be proceeded against by the name in the indictment or information. [G. S. 1868, ch. 82, § 223, Oct. 31.]

(5292) Subsequent proceedings. § 224. If he alleges that another name is his true name, it must be entered in the minutes of the court; and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted. [G. S. 1868, ch. 82, § 224, Oct. 31.]

(5293) Indictment quashed. § 225. The court may quash an indictment or information, on motion, when it appears upon its face either—*First*, That the grand jury had no legal authority to inquire into the offense charged; *second*, that the facts stated do not constitute a public offense; *third*, that the indictment or information contains any matter which, if true, would constitute a legal justification of the offense charged, or other legal bar to the prosecution. [G. S. 1868, ch. 82, § 225, Oct. 31.]

(*State v. Fisher*, 37 K. 404; *State v. Lewis*, 26 K. 123; *Rice v. State*, 3 K. 142.)

(5294) Dismissed. § 226. No indictment or information shall be dismissed except by order of the court, on motion. [G. S. 1868, ch. 82, § 226, Oct. 31.]

(5295) Order of trial. § 227. The jury being impaneled and sworn, the trial may proceed in the following order: *First*, The prosecuting attorney must state the case, and offer the evidence in support of the prosecution; *second*, the defendant or

his counsel may then state his defense, and offer evidence in support thereof; *third*, the parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon the original case; *fourth*, the court must charge the jury; *fifth*, unless the case be submitted without argument, the counsel for the state shall make the opening argument, the counsel for the defendant or defendants shall follow, and the counsel for the state shall conclude the argument. [G. S. 1868, ch. 82, § 227, Oct. 31.]

(State v. Skinner, 34 K. 256; State v. Witt, 34 K. 488; State v. McCool, 34 K. 613, 617; State v. Chandler, 31 K. 201; State v. Teissedre, 30 K. 476; State v. Gutekunst, 24 K. 252; State v. Mortimer, 20 K. 93; State v. Comstock, 20 K. 650; State v. Riddle, 20 K. 711; Winter v. Sass, 19 K. 556.)

(5296) Presumed innocent. § 228. A defendant is presumed to be innocent until the contrary is proved. When there is a reasonable doubt whether his guilt is satisfactorily shown, he must be acquitted. When there is a reasonable doubt in which of two or more degrees of an offense he is guilty, he may be convicted of the lowest degree only. [G. S. 1868, ch. 82, § 228, Oct. 31.]

(State v. Child, 40 K. 482; State v. Nixon, 22 K. 205; State v. Miller, 29 K. 43, 47; State v. Bridges, 29 K. 138; State v. Kearley, 26 K. 77; State v. Kuhnke, 26 K. 405; State v. Mahn, 25 K. 182; State v. Adams, 20 K. 311; State v. Ingram, 16 K. 14, 15, 18; State v. White, 14 K. 538; State v. Smith, 13 K. 297; State v. Cassady, 12 K. 550; State v. Crawford, 11 K. 32; State v. Medlicott, 9 K. 257; Wise v. State, 2 K. 419; Horne v. State, 1 K. 42; Territory v. Reyburn, McC. 134.)

(5297) One of several. § 229. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may, also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court for the purpose of giving testimony for a co-defendant. The order of discharge is a bar to another prosecution for the same offense. [G. S. 1868, ch. 82, § 229, Oct. 31.]

(State v. Ingram, 16 K. 14; Cummings v. State, 4 K. 225; Craft v. State, 3 K. 450.)

(5298) Mistake. § 230. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged, if there appears good cause to detain him in custody; but the court must recognize or commit him to answer to the offense, and, if necessary, recognize the witnesses to appear and testify. [G. S. 1868, ch. 82, § 230, Oct. 31.]

(5299) Wrong county. § 231. When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment or information to be corrected, and direct that all the papers and proceedings be certified to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereof; and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced. [G. S. 1868, ch. 82, § 231, Oct. 31.]

(State v. Goodwin, 33 K. 538.)

(5300) Jury in such case. § 232. When a jury has been impaneled in either case contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution. [G. S. 1868, ch. 82, § 232, Oct. 31.]

(5301) Several degrees, bar, etc. § 233. When the defendant has been convicted or acquitted upon an indictment or information for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [G. S. 1868, ch. 82, § 233, Oct. 31.]

(State v. Coulter, 40 K. 87; State v. McNaught, 36 K. 624; State v. Guettler, 34 K. 582; State v. Colgate, 31 K. 511; State v. McKinney, 31 K. 570; State v. Shafer, 20 K. 226; State v. Horneman, 16 K. 452.)

(5302) Knowledge of facts. § 234. If a juror has personal knowledge of any fact material to the cause, he must declare it to the court, and not to his fellow-jurors out of court. If a juror declare a fact material to the cause to his fellow-jurors

without the knowledge of the court and defendant, he may be punished as for a contempt. [G. S. 1868, ch. 82, § 234, Oct. 31.]

(5303) Duty of jurors. § 235. When the jurors are permitted to separate after being impaneled, and at each adjournment, they must be admonished by the court that it is their duty not to converse among themselves, nor suffer others to converse with them, on any subject connected with the trial, or to form or express any opinion thereon, until the cause is finally submitted to them. [G. S. 1868, ch. 82, § 235, Oct. 31.]

(State v. Hendricks, 32 K. 559; State v. McKinney, 31 K. 570; State v. Stackhouse, 24 K. 445; State v. Mulkins, 18 K. 16; Lewis v. State, 4 K. 296.)

(5304) Charging in writing. § 236. The judge must charge the jury in writing, and the charge shall be filed among the papers of the cause. In charging the jury he must state to them all matters of law which are necessary for their information in giving their verdict. If he presents the facts of the case, he must inform the jury that they are exclusive judges of all questions of fact. [G. S. 1868, ch. 82, § 236, Oct. 31.]

(State v. Johnson, 40 K. 266; State v. Cleary, 40 K. 287; State v. Smith, 38 K. 194; State v. Peterson, 38 K. 204; State v. McClintock, 37 K. 40; State v. Dorsey, 37 K. 226; State v. Baldwin, 36 K. 1; State v. Miller, 35 K. 323; State v. Whittaker, 35 K. 731; City of Topeka v. Tuttle, 5 K. 311; Fullenwider v. Ewing, 25 K. 69; State v. Groning, 33 K. 18; State v. Tatlow, 34 K. 80; State v. Burwell, 34 K. 312; State v. Jansen, 22 K. 498; State v. Mortimer, 20 K. 93; State v. Buffington, 20 K. 599; State v. Grebe, 17 K. 458; State v. Bybee, 17 K. 462; State v. Ingram, 16 K. 14; State v. Bowen, 16 K. 475; State v. Potter, 15 K. 302, 303, 304; State v. Reeves, 15 K. 396, 399; State v. Kellerman, 14 K. 135; State v. White, 14 K. 538; State v. Smith, 13 K. 274; State v. Cassady, 12 K. 550; State v. Lewis, 10 K. 157; State v. Herold, 9 K. 194; State v. Medlicott, 9 K. 257; State v. Huber, 8 K. 447; State v. Reddick, 7 K. 143; State v. Dickson, 6 K. 209; State v. Volmer, 6 K. 371; Lewis v. State, 4 K. 296; Rice v. State, 3 K. 141; Craft v. State, 3 K. 452; Campbell v. State, 3 K. 488; Millar v. State, 2 K. 174; Horne v. State, 1 K. 42; Madden v. State, 1 K. 340.)

(5305) Jury decide; retire. § 237. After hearing the charge, the jury may either decide in the court, or retire for deliberation. They may retire under the charge of an officer, sworn to keep them together in some private or convenient place, without food, except such as the court shall order, and not permit any person to speak or communicate with them, nor do

so himself, unless by order of the court, or to ask them whether they have agreed upon their verdict, and return them into court, or when ordered by the court. The officer shall not communicate to any person the state of their deliberations. [G. S. 1868, ch. 82, § 237, Oct. 31.]

(State v. Taylor, 36 K. 329; State v. Bailey, 32 K. 83; State v. McKinney, 31 K. 570; State v. Brown, 22 K. 222; State v. Snyder, 20 K. 307; State v. Adams, 20 K. 311; Madden v. State, 1 K. 340.)

(5306) The verdict. § 238. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and, if all appear, their verdict must be rendered in open court. If all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again at the same or next term. [G. S. 1868, ch. 82, § 238, Oct. 31.]

(State v. McKinney, 31 K. 570; State v. Furbeck, 29 K. 532; State v. McNulty, 26 K. 533; State v. Otey, 7 K. 69.)

(5307) Specify degree. § 239. Upon the trial of any indictment or information for any offense, where by law there may be conviction of different degrees of such offense, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offense they find the defendant guilty. [G. S. 1868, ch. 82, § 239, Oct. 31.]

(State v. Jennings, 24 K. 642; State v. Adams, 20 K. 311; State v. Potter, 16 K. 80; State v. Bowen, 16 K. 475; State v. Potter, 15 K. 302; State v. Huber, 8 K. 447; State v. Reddick, 7 K. 143.)

(5308) Value of property, etc. § 240. Where the indictment or information charges an offense against the property of another by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain, and declare in their verdict, the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so shall in nowise affect the validity of their verdict. [G. S. 1868, ch. 82, § 240, Oct. 31.]

(5309) Assess punishment. § 241. After a verdict of guilty by a jury, against the defendant, or a plea of guilty by the defendant in open court, or a finding of guilty by the court,

if judgment be not arrested or a new trial granted, the court shall pronounce sentence against the defendant, assessing the penalty of the law provided for the offense of which the defendant shall have been found guilty. [G. S. 1868, ch. 82, § 241, Oct. 31.]

(*State v. Fisher*, 8 K. 208; *State v. Huber*, 8 K. 448.)

(5310) Security to keep peace. § 242. The court before which any person shall be convicted of any criminal offense shall have power, in addition to the sentence prescribed or authorized by law, to require such persons to give security to keep the peace, or be of good behavior, or both, for a term not exceeding two years, or to stand committed until such security be given. [G. S. 1868, ch. 82, § 242, Oct. 31.]

(*Roberts v. State*, 34 K. 151; *State v. Roberts*, 37 K. 437; *Durein v. State*, 38 K. 485; *State v. Chandler*, 31 K. 201.)

(5311) Preceding section. § 243. The last section shall not extend to convictions for writing or publishing any libel, nor shall any security be hereafter required by any court, upon any complaint, prosecution, or conviction, for any such writing or publishing. [G. S. 1868, ch. 82, § 243, Oct. 31.]

(5312) Recognizance not broken. § 244. No recognizance given under the provisions of the second preceding section shall be deemed to be broken unless the principal therein be convicted of some offense amounting, in judgment of law, to a breach of such recognizance. [G. S. 1868, ch. 82, § 244, Oct. 31.]

(5313) Presence of defendant. § 245. For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only, he must be personally present, or some responsible person must undertake for him to pay the judgment and costs; judgment may then be rendered in his absence. [G. S. 1868, ch. 82, § 245, Oct. 31.]

(*Moorehead v. State*, 38 K. 489; *State v. Granville*, 26 K. 158.)

(5314) Brought into court. § 246. When the defendant is convicted of any offense, if he be in custody the court may direct the officer in whose custody he is to bring him before it for judgment. [G. S. 1868, ch. 82, § 246, Oct. 31.]

(5315) Warrant for arrest. § 247. If, in any case, the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in this state as a warrant of arrest in other cases. [G. S. 1868, ch. 82, § 247, Oct. 31.]

(5316) Defendant appears. § 248. When the defendant appears for judgment he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him. [G. S. 1868, ch. 82, § 248, Oct. 31.]

(State v. Jennings, 24 K. 642.)

(5317) Judgment. § 249. If no sufficient cause be alleged or appear to the court why judgment should not be pronounced, it shall thereupon be rendered. [G. S. 1868, ch. 82, § 249, Oct. 31.]

(State v. Hughes, 35 K. 626; State v. Plowman, 28 K. 569.)

(5318) Two offenses. § 250. When any person shall be convicted of two or more offenses, before sentence shall have been pronounced upon him for either offense, the imprisonment to which he shall be sentenced upon the second or other subsequent conviction shall commence at the termination of the term of imprisonment to which he shall be adjudged upon prior convictions. [G. S. 1868, ch. 82, § 250, Oct. 31.]

(State v. Carlisle, 33 K. 716.)

(5319) Committed. § 251. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same are paid. [G. S. 1868, ch. 82, § 251, Oct. 31.]

(*In re* Mitchell, 39 K. 762; *City of Miltonvale v. Lanoue*, 35 K. 603; *In re* Boyd, 34 K. 570; *State v. Brooks*, 33 K. 708; *State v. Granville*, 26 K. 158; *State v. O'Kane*, 23 K. 244.)

(5320) Prosecutor pay costs. § 252. In all cases in which the prosecutor shall be adjudged to pay the costs, he shall be sentenced to pay the costs of prosecution, or give security to the sheriff to pay the same in ten days, and to stand committed until the sentence be complied with. [G. S. 1868, ch. 82, § 252, Oct. 31.]

(5321) Release of persons. § 253. That any person imprisoned for failure to pay any fine or costs, except fines and costs imposed for violation of the prohibitory laws of this state, may be discharged from imprisonment by the board of county commissioners of the county where conviction took place, on presentation of a petition for that purpose signed by not less than one hundred *bona fide* tax-payers of the county, and upon the recommendation of the judge or justice of the peace before whom the conviction was had, together with satisfactory proof to them that said person is unable to pay the same: *Provided*, Said discharge shall not discharge or release said person from his liability to pay said fine and costs; but the same may at any time thereafter be collected by execution, as on judgments in civil cases. [G. S. 1868, ch. 82, § 253, as amended by Laws 1889, ch. 199, § 1, March 26.]

(*In re Boyd*, 34 K. 570.)

(5322) Judgment entered. § 254. Whenever judgment, upon a conviction, shall be rendered in any court, the clerk of such court shall enter such judgment fully on the minutes, stating briefly the offense for which such conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in no wise affect or impair the validity of the judgment. [G. S. 1868, ch. 82, § 254, Oct. 31.]

(*State v. Hughes*, 35 K. 626.)

(5323) Execute sentence. § 255. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offense, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county a transcript of the entry of such conviction, and of the sentence thereupon, duly certified by such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly. [G. S. 1868, ch. 82, § 255, Oct. 31.]

(*In re Boyd*, 34 K. 570.)

(5324) Execution of. § 256. Where any convict shall be sentenced to any punishment, the clerk of the court in which

sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall without delay, either in person or by a general or usual deputy, cause such convict to receive the punishment to which he was sentenced. [G. S. 1868, ch. 82, § 256, Oct. 31.]

(*State v. Hollon*, 22 K. 580; *Hollon v. Hopkins*, 31 K. 638.)

(5325) Require assistance. § 257. Such sheriff or deputy, while conveying a convict to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of this state in securing such convict, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy when required shall be liable to the same penalties as for similar refusals in other cases. [G. S. 1868, ch. 82, § 257, Oct. 31.]

(5326) Capital cases. § 258. Whenever any convict shall be sentenced to the punishment of death, the court shall cause to be made out, sealed, and delivered to the sheriff of the county, a warrant stating such conviction and sentence, and an order instructing the sheriff of the county to convey such convict to the penitentiary, and to deliver the said convict to the warden thereof, to be by him safely kept until the time fixed for his execution, as hereinafter provided; and a certified copy of such warrant shall be by the clerk forthwith transmitted to the governor of the state. [G. S. 1868, ch. 82, § 258, as amended by Laws 1872, ch. 166, § 1, March 28.]

(*In re Petty*, 22 K. 477; *State v. Crawford*, 11 K. 32, 46.)

(5327) How inflicted. § 259. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the governor of the state for the time being may appoint, not less than one year from the time of conviction. [G. S. 1868, ch. 82, § 259, as amended by Laws 1872, ch. 166, § 2, March 28.]

(5328) Governor issue warrant, etc. § 260. The governor shall keep in his office a record of all warrants of conviction and sentence received by him as aforesaid; and any governor

of the state for the time being shall, in his discretion, at any time not less than one year from the time of conviction of each convict respectively, make an order fixing the day on which the sentence of the law shall be carried into effect, which time shall be at least thirty days from the issuance of such order, which order shall be directed to the warden of the penitentiary, to be by him executed: *Provided*, That no governor shall be compelled to issue any order as herein provided for the execution of any convict, whether convicted in his own term or in that of some of his predecessors, nor shall he be limited in issuing any such order to such convicts as have been convicted during his term of office. [G. S. 1868, ch. 82, § 260, as amended by Laws 1872, ch. 166, § 3, March 28.]

(5329) Duty of warden. § 261. Until the receipt of such order by the warden, he shall keep any convict, so sentenced to death, at hard labor, within the walls of the penitentiary; and upon receipt of such order the said warden shall at once remove the convict described therein to a cell, where he shall be kept securely confined until the time for the execution of the sentence. The said execution shall take place within the inclosure of the penitentiary, and shall be carried into effect by the warden, or by some officer of the penitentiary under his direction. The warden shall invite to be present at the execution, by at least three days' notice, two physicians and twelve respectable citizens, to be selected by him; he must also, at the request of defendant, permit any minister of the gospel whom the defendant may name, and any of his relations, to attend the execution, and also such peace officers as the warden may deem proper. No person other than those mentioned in this section, nor shall any person under age be allowed to witness the execution. [G. S. 1868, ch. 82, § 261, as amended by Laws 1872, ch. 166, § 4, March 28.]

(5330) Appeal; insanity, etc. § 262. In case of an appeal or writ of error taken by a person convicted and sentenced to death as aforesaid, the sentence of the law shall not be carried into effect until after the hearing and determination of such

appeal or writ of error. In case of a person convicted and sentenced to death becoming insane, such person shall not be executed until the governor shall be satisfied, upon the oaths of twelve good and true men, to be named and summoned by the warden, upon proper inquiry and investigation being made under direction of the warden, that such insanity no longer exists; and in case of a female convicted and sentenced to death being pregnant (which fact shall be ascertained and certified by the matron of the penitentiary), her sentence shall not be carried into effect until one year after her child is born. [G. S. 1868, ch. 82, § 262, as amended by Laws 1872, ch. 166, § 5, March 28.]

(5332) Not executed, writ. § 270. Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the prosecuting attorney, shall issue a writ of *habeas corpus* to bring such convict before the court; or, if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof. [G. S. 1868, ch. 82, § 270, Oct. 31.]

(5333) Proceedings. § 271. Upon such convict being brought before the court, they shall proceed to inquire into the facts, and if no legal reasons exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence, at such time as shall be appointed therein, which shall be obeyed by the sheriff accordingly. [G. S. 1868, ch. 82, § 271, Oct. 31.]

(*In re Petty*, 22 K. 477.)

(5334) Execution for fines. § 272. It shall be the duty of the clerk of the district court, at the end of each term, to issue executions for all fines imposed, and the costs of conviction in criminal cases, during the term, and remaining unpaid, which shall be executed in the same manner as executions in

civil cases; and the property of the defendant may be seized and sold thereon, notwithstanding he may be in custody for the same demand. [G. S. 1868, ch. 82, § 272, Oct. 31.]

(5335) New trial. § 273. A new trial is a re-examination of the issue in the same court. [G. S. 1868, ch. 82, § 273, Oct. 31.]

(State v. Baldwin, 36 K. 1; State v. Bridges, 29 K. 138; State v. McCord, 8 K. 242, 243.)

(5336) Effect of. § 274. The granting of a new trial places the parties in the same position as if no trial had been had; the former verdict cannot be used or referred to either in the evidence or argument. [G. S. 1868, ch. 82, § 274, Oct. 31.]

(State v. McNaught, 36 K. 624; State v. Miller, 35 K. 328; State v. Hart, 33 K. 218; State v. Rust, 31 K. 509; State v. McCord, 8 K. 232.)

(5337) Causes. § 275. The court may grant a new trial for the following causes, or any of them: *First*, When the jury has received any evidence, papers or documents not authorized by the court, or the court has admitted illegal testimony, or for newly-discovered evidence; *second*, when the jury has been separated without leave of the court after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case; *third*, when the verdict has been decided by means other than a fair expression of opinion on the part of all the jurors; *fourth*, when the court has misdirected the jury in a material matter of law; *fifth*, when the verdict is contrary to law or evidence; but not more than two new trials shall be granted for this cause alone. [G. S. 1868, ch. 82, § 275, Oct. 31.]

(State v. Gould, 40 K. 258; State v. Cleary, 40 K. 287; State v. Palmer, 40 K. 474; State v. Yarborough, 39 K. 581; State v. Peterson, 38 K. 204; State v. Holden, 35 K. 31; State v. Miller, 35 K. 328; State v. Burns, 35 K. 387; State v. Smith, 35 K. 618; State v. Whitaker, 35 K. 731; City of Cherokee v. Fox, 34 K. 16; State v. Tatlow, 34 K. 80; State v. Clark, 34 K. 289; State v. McCool, 34 K. 613; State v. Martin, 31 K. 353; State v. McKinney, 31 K. 570; State v. Yordl, 30 K. 221; State v. Kearley, 26 K. 77; State v. Pomeroy, 25 K. 349; State v. Mahn, 25 K. 182; State v. Rhea, 25 K. 576; State v. Scott, 24 K. 68; State v. Wilson, 24 K. 189; State v. Gutekunst, 24 K. 252; State v. Stackhouse, 24 K. 445; State v. Henry, 24 K. 457; State v. Lantz, 23 K. 728; State v. Roark, 23 K. 147; State v. Ruth, 25 K. 583; State v. Mortimer, 20 K. 93; State v. Snyder, 20 K. 306; State v. Taylor, 20 K. 643; State v. Winner, 17 K. 298; State v. Cook,

17 K. 392; *State v. Grebe*, 17 K. 458; *State v. Bybee*, 17 K. 462; *State v. White*, 17 K. 487; *State v. Ingram*, 16 K. 14; *State v. Potter*, 15 K. 303; *Id.* 16 K. 82; *State v. Bohan*, 15 K. 407; *State v. Jennerson*, 14 K. 133; *State v. Morrow*, 13 K. 119; *State v. Horne*, 9 K. 120; *State v. Montgomery*, 8 K. 351; *State v. Otey*, 7 K. 69; *State v. Dickson*, 6 K. 209; *Lewis v. State*, 4 K. 296; *Montgomery v. State*, 3 K. 264; *Craft v. State*, 3 K. 451; *Madden v. State*, 1 K. 341.)

(5338) Application. § 276. The application for a new trial must be made before judgment. [G. S. 1868, ch. 82, § 276, Oct. 31.]

(5339) Motion in arrest. § 277. A motion in arrest of judgment is an application, on the part of defendant, that no judgment be rendered on a verdict of guilty or finding of the court, and may be granted by the court for either of the following causes: *First*, That the grand jury who found the indictment had no legal authority to inquire into the offense charged, by reason of it not being within the jurisdiction of the court; *second*, that the facts stated do not constitute a public offense. [G. S. 1868, ch. 82, § 277, Oct. 31.]

(*State v. Smith*, 35 K. 618; *State v. Schmidt*, 34 K. 399; *State v. McCool*, 34 K. 617; *State v. Hart*, 33 K. 218; *State v. Harp*, 31 K. 496; *State v. McAnulty*, 26 K. 533; *State v. Henry*, 24 K. 457; *Montgomery v. State*, 3 K. 264; *Smith v. State*, 1 K. 365; *Guy v. State*, 1 K. 448; *Wessells v. Territory*, McC. 100.)

(5340) Without motion. § 278. The court may also, on its view of any of these defects, arrest the judgment without motion. [G. S. 1868, ch. 82, § 278, Oct. 31.]

(5341) Effect of. § 279. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed, except in cases otherwise provided for. [G. S. 1868, ch. 82, § 279, Oct. 31.]

(*State v. Hart*, 33 K. 218; *City of Olathe v. Adams*, 15 K. 395.)

(5342) Recommitment. § 280. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense if properly charged, the court may order the defendant to be recommitted or admitted to bail anew, to answer a new indictment or information. [G. S. 1868, ch. 82, § 280, Oct. 31.]

(5343) Appeal. § 281. An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him; and upon the appeal, any decision of the court or intermediate order made in the progress of the case may be reviewed. [G. S. 1868, ch. 82, § 281, Oct. 31.]

(State v. Gould, 40 K. 258; State v. Edwards, 35 K. 99, 105; *In re* Edwards, 35 K. 99; State v. Elrod, 35 K. 639; State v. Anderson, 34 K. 116; State v. McCool, 34 K. 613; State v. English, 34 K. 629; *In re* Chambers, 30 K. 453; State v. Dent, 29 K. 416; State v. Stewart, 24 K. 250; McGilvray v. State, 19 K. 479; State v. Lofland, 17 K. 390; State v. Horneman, 16 K. 452; State v. Sullivan, 14 K. 170; Cummings v. State, 4 K. 225.)

(5344) How taken. § 282. An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in this article. [G. S. 1868, ch. 82, § 282, Oct. 31.]

(State v. Ricker, 40 K. 14; State v. Prater, 40 K. 15; State v. Furney, 40 K. 17; State v. McFarland, 38 K. 664; State v. Carr, 37 K. 421; State v. Edwards, 35 K. 105; *In re* Chambers, 30 K. 455; State v. Nickerson, 30 K. 545; State v. Lund, 28 K. 280; McLean v. State, 28 K. 372; State v. Freeland, 16 K. 9; State v. Horneman, 16 K. 452; City of Oswego v. Belt, 16 K. 480; Neitzel v. City of Concordia, 14 K. 446, 447.)

(5345) By the state. § 283. Appeals to the supreme court may be taken by the state in the following cases, and no other: *First*, Upon a judgment for the defendant, on quashing or setting aside an indictment or information; *second*, upon an order of the court arresting the judgment; *third*, upon a question reserved by the state. [G. S. 1868, ch. 82, § 283, Oct. 31.]

(Junction City v. Keefe, 40 K. 275; State v. Phillips, 33 K. 100; State v. Zimmerman, 31 K. 85; State v. Crosby, 17 K. 396, 401; State v. Freeland, 16 K. 9; City of Olathe v. Adams, 15 K. 391; State v. Brandon, 7 K. 106; State v. Carmichael, 3 K. 102.)

(5346) When taken. § 284. The appeal must be taken within two years after the judgment is rendered, and the transcript must be filed within thirty days after the appeal is taken. [G. S. 1868, ch. 82, § 284, Oct. 31.]

(State v. McFarland, 38 K. 664; State v. Cash, 36 K. 623; State v. Teissedre, 30 K. 476; State v. Lund, 28 K. 280; State v. McEwen, 12 K. 37.)

(5347) How taken. § 285. An appeal is taken by the service of a notice upon the clerk of the court where judgment was entered, stating that the appellant appeals from the judgment.

If taken by the defendant, a similar notice must be served upon the prosecuting attorney. If taken by the state, a similar notice must be served upon the defendant, if he can be found in the county; if not there, by posting up a notice three weeks in the office of the clerk of the district court. [G. S. 1868, ch. 82, § 285, Oct. 31.]

(*In re* Chambers, 30 K. 450; *State v. Teilsedra*, 30 K. 477; *State v. Ashmore*, 19 K. 544; *State v. Baird*, 9 K. 60; *State v. Brandon*, 6 K. 243; *Carr v. State*, 1 K. 331; *State v. King*, 1 K. 466.)

(5348) Not affected. § 286. An appeal taken by the state in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed. [G. S. 1868, ch. 82, § 286, Oct. 31.]

(*State v. Volmer*, 6 K. 379.)

(5349) When execution stayed. § 287. An appeal to the supreme court from a judgment of conviction shall stay the execution when the judgment is for a fine, or for fine and costs only. In all other cases the execution of the judgment shall be stayed by the order of the supreme court or any justice thereof upon the appellant giving bond in such sum as said court or justice shall prescribe, said bond to be approved by said court or any justice thereof; and in default thereof the defendant shall remain in the custody of the sheriff until the further order of the supreme court: *Provided*, That when the conviction is for an offense not bailable, the supreme court, or a justice thereof, shall make order for the safe-keeping of the appellant in the jail of the county in which the offense was alleged to have been committed, or in case of no sufficient jail in such county, then in the jail of the county nearest having a sufficient jail: *And provided further*, That the appellant availing himself of the benefits of this act shall take his appeal within thirty (30) days after the judgment is rendered, and shall file the transcript with the clerk of the supreme court, and shall make his application to the supreme court, or justice thereof, within ninety (90) days after the appeal is taken. [G. S. 1868, ch. 82, § 287, as amended by Laws 1889, ch. 127, § 2, March 21.]

(*State v. Coulter*, 40 K. 87; *Bird v. Gilbert*, 40 K. 469; *In re Simmons*, 39 K. 125; *City of Miltonvale v. Lanoue*, 35 K. 603; *State v. Grewell*, 19 K. 189; *State v. Volmer*, 6 K. 379.)

(5350) Question reserved. § 288. In case of an appeal from a question reserved on the part of the state, it is not necessary for the clerk of the court below to certify in the transcript any part of the proceedings and record, except the bill of exceptions and the judgment of acquittal. When the question reserved is defectively stated, the supreme court may direct any other part of the proceedings and record to be certified to them. [G. S. 1868, ch. 82, § 288, Oct. 31.]

(*State v. Lund*, 28 K. 280; *State v. Crosby*, 17 K. 396.)

(5351) Appeal for trial. § 289. An appeal shall stand for trial immediately after filing the transcript, if the supreme court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the appellee. [G. S. 1868, ch. 82, § 289, Oct. 31.]

(*State v. Teissedre*, 30 K. 210; *State v. Lund*, 28 K. 280; *Carr v. State*, 1 K. 331.)

(5352) One of several. § 290. When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby. [G. S. 1868, ch. 82, § 290, Oct. 31.]

(5353) Reversed, affirmed, or modified. § 291. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case the cause must be remanded to the court below, with proper instructions and the opinion of the court, within the time and in the manner to be prescribed by rule of the court. [G. S. 1868, ch. 82, § 291, Oct. 31.]

(5354) When reversed. § 292. When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment, the supreme court must direct the prisoner to be

returned and delivered over to the jailer of the proper county, there to abide the order of the court in which he was convicted. [G. S. 1868, ch. 82, § 292, Oct. 31.]

(5355) Errors disregarded. § 293. On an appeal, the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties. [G. S. 1868, ch. 82, § 293, Oct. 31.]

(State v. Skinner, 34 K. 256, 268; State v. Baldwin, 36 K. 1; State v. Rohrer, 34 K. 427; State v. McCool, 34 K. 613; State v. English, 34 K. 629; State v. Drake, 33 K. 151; State v. Bailey, 32 K. 83; State v. Wilgus, 32 K. 126; State v. Curtis, 29 K. 388; State v. Sterns, 28 K. 154; State v. Winner, 17 K. 298; State v. Gurnee, 14 K. 112; State v. Cassady, 12 K. 550; State v. Boyle, 10 K. 113; State v. Herold, 9 K. 194; Rice v. State, 3 K. 142; Millar v. State, 2 K. 175; Laurent v. State, 1 K. 313; Morton v. State, 1 K. 468.)

(5356) Defect. § 294. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected in a reasonable time after an appeal has been dismissed, another appeal may be taken. [G. S. 1868, ch. 82, § 294, Oct. 31.]

(State v. McAnulty, 26 K. 533; State v. Boyle, 10 K. 113.)

(5357) Execution. § 295. On a judgment of affirmance against the defendant, the original judgment must be carried into execution as the appellate court may direct. [G. S. 1868, ch. 82, § 295, Oct. 31.]

(5358) Opinion. § 296. All opinions of the supreme court in criminal prosecutions must be given in writing and recorded in the journal. [G. S. 1868, ch. 82, § 296, Oct. 31.]

(5359) Code applicable. § 297. The provisions of this code applicable to the district court and the judges thereof shall also be applicable to any other court of record exercising criminal jurisdiction and the judges thereof. [G. S. 1868, ch. 82, § 297, Oct. 31.]

5360) Search warrant. § 298. Upon complaint being made, on oath, to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant suspects that such property is concealed in any particular house or place, if such

magistrate shall be satisfied that there are reasonable grounds for such suspicion, he shall issue a warrant to search for such property. [G. S. 1868, ch. 82, § 298, Oct. 31.]

(5361) Its command. § 299. Such warrant shall be directed to the sheriff of the county or any constable of the township, and shall command him to search the place where such property is suspected to be concealed, in the daytime, which place shall be designated and the property particularly described in such warrant, and to bring such property before the magistrate issuing such warrant. [G. S. 1868, ch. 82, § 299, Oct. 31.]

(5362) Search. § 300. If there be positive proof that any property stolen or embezzled is concealed in any particular place or house, the warrant may order the searching of such place or house. [G. S. 1868, ch. 82, § 300, Oct. 31.]

(5363) By whom executed. § 301. Every such warrant shall be executed by a public officer, and not by any other person. [G. S. 1868, ch. 82, § 301, Oct. 31.]

(5364) Person committed. § 302. Any magistrate who shall commit any person charged with an offense to jail, or by whom any vagrant or disorderly person shall be committed, may cause such person to be searched for the purpose of discovering any money or property he may have; and if any be found, the same may be taken and applied to the support of such person while in confinement. [G. S. 1868, ch. 82, § 302, Oct. 31.]

(5365) Stolen property. § 303. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officers, he shall hold the same subject to the order of the officer authorized to direct the disposition thereof. [G. S. 1868, ch. 82, § 303, Oct. 31.]

(5366) Delivered to owner. § 304. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused

of any of the offenses referred to in the preceding section may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property. [G. S. 1868, ch. 82, § 304, Oct. 31.]

(5367) Custody of magistrate. § 305. If such property come into the custody of a justice of the peace or other magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate. [G. S. 1868, ch. 82, § 305, Oct. 31.]

(5368) The same. § 306. If such property shall not have been delivered to the owner, the court before which a conviction shall be had for the stealing or embezzling thereof, may, on proof of the ownership of any person, order the same to be restored to him, on payment of the expenses incurred in the preservation thereof. [G. S. 1868, ch. 82, § 306, Oct. 31.]

(5369) If not claimed. § 307. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it, in any of the modes referred to in this act, the court or magistrate authorized by the preceding provisions to order a restoration may order the same to be sold, and the proceeds of the sale, after payment of the expenses of the preservation and sale of the property, shall be paid into the county treasury for the use of the county. [G. S. 1868, ch. 82, § 307, Oct. 31.]

(5370) Perishable property. § 308. If the property thus obtained be a living animal, or of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof, and the proceeds shall be applied in the same manner as hereinbefore directed in respect to such property. [G. S. 1868, ch. 82, § 308, Oct. 31.]

(5371) Sale in last section. § 309. In all cases of sale as specified in the last section, a particular description of the

property shall be made out in writing and filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim. [G. S. 1868, ch. 82, § 309, Oct. 31.]

(5372) Warrant. § 310. Warrants authorized by law to be issued in criminal cases may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed. [G. S. 1868, ch. 82, § 310, Oct. 31.]

(5373) Authority of officer. § 311. Every officer or other person who shall have arrested or have in his custody, under the authority of the laws of this state, any prisoner who is to be conveyed from one county to another, may carry such prisoner through such parts of any county as shall be in the ordinary route of travel, from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered, under the process or authority by which such prisoner shall have been arrested or is detained. [G. S. 1868, ch. 82, § 311, Oct. 31.]

(5374) Exempt from arrest; powers. § 312. The officer or person having such prisoner in charge shall not be liable to arrest, on civil process, while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escapes, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid shall be an offense punishable in the same manner as for disobedience to summons to assist in the execution of process. [G. S. 1868, ch. 82, § 312, Oct. 31.]

(5375) Receive prisoner. § 313. The jailer of every county through which such prisoner may be taken is required to receive and safely keep such prisoner in the jail of which he has charge, when thereto requested by the officer or person having lawful charge of such prisoner, and redeliver him on demand of such officer or person. [G. S. 1868, ch. 82, § 313, Oct. 31.]

(5376) Fugitive from justice. § 314. Before the governor of this state shall demand any fugitive from justice from the executive of any other state or territory, the county attorney of the county where the crime is alleged to have been committed shall examine into the case, and if satisfied that a crime has been committed, and that the person charged is the guilty person, he shall so certify to the governor upon the affidavit, information or indictment presented, and ask a requisition to be made in accordance therewith; and the governor may issue his warrant, under the seal of the state, directed to the agent or messenger recommended by the said county attorney, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed or is by law cognizable. [G. S. 1868, ch. 82, § 314, Oct. 31.]

(Moon v. Comm'rs of Butler Co., 30 K. 458.)

(5377) Expenses. § 315. The expenses which may accrue under the preceding section shall be paid by the county where the offense was committed, except in capital cases which, in the opinion of the governor, demand prompt and immediate action; and when a delay in procuring the necessary papers from the county attorney, as heretofore provided, would operate to prevent the apprehension of the criminal, then, and in such cases, the expenses shall be paid by the state. [G. S. 1868, ch. 82, § 315, Oct. 31.]

(Moon v. Comm'rs of Butler Co., 30 K. 458.)

(5378) View by jury. § 316. Whenever in the opinion of the court it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the officer and the person appointed to show them the place shall speak to them on any subject connected with the trial. [G. S. 1868, ch. 82, § 316, Oct. 31.]

(State v. Furbeck, 29 K. 536; State v. Adams, 20 K. 312.)

(5379) Door broken open. § 317. To make an arrest in criminal actions, the officer may break open any outer or inner door or window of a dwelling-house or other building, or any other inclosure, if, after notice of his office and purpose, he is refused admittance. [G. S. 1868, ch. 82, § 317, Oct. 31.]

(5380) Corruption. § 318. When the sheriff or other officer is guilty of corruption in selecting or impaneling a grand or traverse jury, it is good cause of challenge to any of the jurors so selected or impaneled. [G. S. 1868, ch. 82, § 318, Oct. 31.]

(5381) Judgments, etc. § 319. Every judgment, commitment, and process of the district court must be executed by the sheriff. [G. S. 1868, ch. 82, § 319, Oct. 31.]

(5382) Duty of warden. § 320. When any convict in the state penitentiary is ordered to be returned to the county where he was convicted to await a new trial, the warden of the state penitentiary must execute the order. The warden is entitled to such fees therefor as are allowed to the sheriff for taking the convict to the state penitentiary. [G. S. 1868, ch. 82, § 320, Oct. 31.]

(5383) Term "person." § 321. When the term "person," or other word, is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this state, or any other state or territory. or any public or private corporation, as well as an individual. [G. S. 1868, ch. 82, § 321, Oct. 31.]

(State v. Herold, 9 K. 194.)

(5384) Reward. § 322. If any person charged with or convicted of a felony shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of this state may if he deems it expedient offer any reward, not exceeding three hundred dollars, for the apprehension and delivery of such person to the custody of such sheriff, or other officer, as he may direct. [G. S. 1868, ch. 82, § 322, Oct. 31.]

(5385) Certificate, etc. § 323. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer,

he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the state auditor. [G. S. 1868, ch. 82, § 323, Oct. 31.]

(5386) Pardon. § 324. In all cases in which the governor is authorized by law to grant pardons, he may grant the same on such conditions and under such restrictions as he may think proper. [G. S. 1868, ch. 82, § 324, Oct. 31.]

(5387) Costs. § 325. The costs incurred on the part of the prosecution shall be paid by the county in which the offense is committed when the defendant shall be convicted and shall be unable to pay them. [G. S. 1868, ch. 82, § 325, Oct. 31.]

(Comm'rs of Barton Co. v. Negbaur, 34 K. 285; State v. Campbell, 19 K. 481; Comm'rs of Shawnee Co. v. Hanback, 4 K. 282; Comm'rs of Shawnee Co. v. Whiting, 4 K. 273; Shawnee Co. v. Wabaunsee Co., 4 K. 312.)

(5388) Paid by prosecutor. § 326. Whenever it shall appear to the court or jury trying the case that the prosecution has been instituted without probable cause and from malicious motives, the name of the prosecutor shall be ascertained and stated in the finding; and such prosecutor shall be adjudged to pay the costs, and may be committed to the county jail until the same are paid or secured to be paid. [G. S. 1868, ch. 82, § 326, Oct. 31.]

(State v. Manlove, 33 K. 483; State v. Zimmerman, 31 K. 85; State v. Forney, 31 K. 635; State v. Reisner, 20 K. 548; Comm'rs of Shawnee Co. v. Balinger, 20 K. 590; State v. Campbell, 19 K. 481; State v. Cummerford, 16 K. 507.)

(5389) The same. § 327. If a person charged with a felony shall be discharged by the officer taking his examination, or if recognized or committed for any such offense and no indictment or information be preferred against him, the costs shall be paid by the prosecuting witness, unless the court shall find that there was probable cause for instituting the prosecution, and that the same was not instituted for malicious motives. [G. S. 1868, ch. 82, § 327, Oct. 31.]

(State v. Campbell, 19 K. 481.)

(5390) Not paid by state or county. § 328. Whenever any person shall be convicted of any crime or misdemeanor, no

costs incurred on his part except fees for board shall be paid by the state or county. [G. S. 1868, ch. 82, § 328, Oct. 31.]

(*Bennett v. Kroth*, 37 K. 235; *Comm'rs of Osborne Co. v. Honn*, 23 K. 256; *Comm'rs of Pawnee Co. v. Miller*, 20 K. 595; *State v. Campbell*, 19 K. 481; *Comm'rs of Johnson Co. v. Wilson*, 19 K. 485; *Comm'rs of Shawnee Co. v. Whiting*, 4 K. 273.)

(5391) Subpœna not issued. § 329. No subpœna for a witness in any criminal case shall be issued unless the name of such witness is indorsed on the indictment or information, or the prosecuting attorney, or the prosecutor in the cause, or the defendant or his attorney, shall order the same; and no subpœna shall be issued for any witness unless the accused is in custody or on bail, or unless the clerk shall be satisfied that he will be in attendance on the court at the return term of the process; and all costs unnecessarily incurred by a violation of this provision shall be taxed against the clerk. [G. S. 1868, ch. 82, § 329, Oct. 31.]

(5392) Witness subpœnaed. § 330. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court; and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness. [G. S. 1868, ch. 82, § 330, Oct. 31.]

(*Hendricks v. Comm'rs of Chautauqua Co.*, 35 K. 483.)

(5393) Allowance for fettering. § 331. Whenever the tribunal transacting county business of any county in which the offender shall have committed any crime for which he is imprisoned may be satisfied of the necessity of so doing, they may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services, fuel, bedding and menial attendance for any prisoner, which shall be paid out of the county treasury. [G. S. 1868, ch. 82, § 331, Oct. 31.]

(*Pfefferle v. Comm'rs of Lyon Co.*, 39 K. 432; *Hendricks v. Comm'rs of Chautauqua Co.*, 35 K. 483; *Comm'rs of Smith Co. v. Comm'rs of Osborne Co.*, 29 K. 72; *Roberts v. Comm'rs of Pottawatomie Co.*, 10 K. 29.)

(5394) Fines and penalties. § 332. All fines and penalties imposed, and all forfeitures incurred in any county, shall

be paid into the treasury thereof, to be applied to the support of the common schools. [G. S. 1868, ch. 82, § 332, Oct. 31.]

(*Blake v. Comm'rs of Johnson Co.*, 18 K. 269.)

(5395) Taxation of costs, etc. § 333. The clerks of the several courts in this state in which any criminal cause shall have been determined, and in which the county shall be liable for the costs, shall, before the next term succeeding that during which the cause shall have been determined or continued, tax all costs which shall have accrued in the same, and make out and deliver to the prosecuting attorney of said court within the time aforesaid a complete fee bill, specifying each item of service, and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect may by motion in the said court, giving two days' notice thereof, which may be served on the clerk or his deputy, recover against the clerk treble the amount of costs to which he is entitled in the cause in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee bill. [G. S. 1868, ch. 82, § 333, Oct. 31.]

(*Pfefferle v. State*, 39 K. 128; *State v. Granville*, 26 K. 158; *Comm'rs of Lyon Co. v. Chase*, 24 K. 774; *State v. O'Kane*, 23 K. 244.)

(5396) Duty of attorney. § 334. It shall be the duty of the prosecuting attorney of every court in this state having criminal jurisdiction to examine strictly each bill of costs which shall have been delivered to him, and ascertain as far as practicable whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes, and whether the county is liable therefor; and if he shall find that the said fee bill has been made out in conformity to law, and if not, after correcting all errors therein, he shall certify to the county board the amount of costs due by the county on the said fee bill; and when such bill has been allowed by the county board, the fees shall be paid to the person to whom the same are due, or on his or her written order. [G. S. 1868, ch. 82, § 334, Oct. 31.]

(5397) Fee bill. § 335. The original fee bill, signed by the prosecuting attorney, a copy of which shall be certified to the county commissioners, shall be carefully preserved by the clerk in his office. [G. S. 1868, ch. 82, § 335, Oct. 31.]

(5398) Limitation. § 336. The prosecuting attorney shall not tax the county with the costs of more than three witnesses to establish any one fact. [G. S. 1868, ch. 82, § 336, Oct. 31.]

(5399) Estate. § 337. Whenever any person shall be imprisoned under a sentence of imprisonment for life, his estate, property and effects shall be administered and disposed of, in all respects, as if he were naturally dead. [G. S. 1868, ch. 82, § 337, Oct. 31.]

(5400) Trustee. § 338. Whenever any person shall be imprisoned in the penitentiary for a term less than his natural life, a trustee to take charge of and manage his estate may be appointed by the probate court of the county in which said convict last resided, or, if he have no known place of abode, then by the court of the county in which the conviction was had, on the application of any of his relatives, or any relative of his wife, or any creditor. [G. S. 1868, ch. 82, § 338, Oct. 31.]

(5401) The same. § 339. Upon producing a copy of the sentence, duly certified, and satisfactory evidence that such convict is actually imprisoned under such sentence, the court to which the application is made may immediately appoint a fit person to be trustee of the estate of such convict. [G. S. 1868, ch. 82, § 339, Oct. 31.]

(5402) Oath and security. § 340. Every such trustee, before entering upon the duties of his office, shall take an oath faithfully to discharge the duties thereof, and give bond in such sum and with such security as the court shall approve, conditioned that he will manage and administer the estate and effects committed to his charge to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things touching his trust as may be prescribed by law or enjoined on him by the order, sentence or decree of

any court of competent jurisdiction. [G. S. 1868, ch. 82, § 340, Oct. 31.]

(5403) Power of court. § 341. The court appointing such trustee shall have a superintending control over him, and may at any time compel him to account, may remove him from his trust for misconduct, and may appoint another person in his stead whenever it may become necessary. [G. S. 1868, ch. 82, § 341, Oct. 31.]

(5404) Vested in trustee. § 342. Upon taking the oath and filing the bond required by this act, all the estate, property, rights in action and effects of such imprisoned convict shall be vested in such trustee, in trust, for the benefit of creditors and others interested therein. [G. S. 1868, ch. 82, § 342, Oct. 31.]

(5405) Powers of. § 343. Such trustee may sue for and recover, in his own name, any of the estate, property or effects belonging to and all debts and sums of money due or to become due to such imprisoned convict, and may prosecute and defend all actions commenced by or against such convict. [G. S. 1868, ch. 82, § 343, Oct. 31.]

(5406) Sale of real estate. § 344. The probate court appointing any such trustee may at any time order the sale, lease or mortgage of real estate whenever the same shall be necessary for the payment of debts or the support or maintenance of the family or the education of the children of such convict, and in every such order shall direct the manner and terms of sales or other dispositions to be made. [G. S. 1868, ch. 82, § 344, Oct. 31.]

(5407) Settle accounts. § 345. The trustee shall settle matters and accounts between such imprisoned convict and his creditors, and may examine witnesses touching such matters and accounts, upon oath to be administered by him. He may, under the direction of the court, compound with any person indebted to such imprisoned convict, and thereupon discharge all demands against such person. [G. S. 1868, ch. 82, § 345, Oct. 31.]

(5408) Redeem mortgages, etc. § 346. Such trustee

may also, under the direction of the court, redeem all mortgages and conditional contracts, and all pledges of personal property, and satisfy judgments and decrees which may be an incumbrance on any property ordered to be sold; or he may sell such property, subject to such mortgages, pledges, or incumbrances, as the court shall direct. [G. S. 1868, ch. 82, § 346, Oct. 31.]

(5409) Notice of appointment. § 347. The trustee, immediately upon his appointment, shall give notice thereof, and therein shall require: *First*, All persons indebted to such imprisoned convict, by a day and at a place therein to be specified, to render an account of all debts and sums of money by them owing respectively to such trustee, and to pay the same; *second*, all persons having in their possession any property and effects of such convict, to deliver the same to the trustee so appointed; *third*, all creditors of such convict to deliver their respective accounts and demands to the trustee by a day to be therein specified, not less than two months from the publication of such notice. [G. S. 1868, ch. 82, § 347, Oct. 31.]

(5410) Published. § 348. Such notice shall be published for at least three weeks in some newspaper printed in or nearest to the county in which the appointment was made. [G. S. 1868, ch. 82, § 348, Oct. 31.]

(5411) Right of action. § 349. Notwithstanding such notice, the trustee may sue for and recover any property or effects of the convict, and any debts due to him, at any time before the day appointed for the delivery or payment thereof. [G. S. 1868, ch. 82, § 349, Oct. 31.]

(5412) Estate converted; accounts kept. § 350. The trustee shall as speedily as possible convert into money so much of the estate, real and personal, as shall be necessary for the purposes of the trust. He shall keep regular accounts of all moneys received, and other matters touching his trust, to which creditors and others interested shall be at liberty at reasonable times to have access. [G. S. 1868, ch. 82, § 350, Oct. 31.]

(5413) Report; dividends. § 351. The trustee shall annually, at such term as the court shall direct, make a full report of his proceedings to the court, and a full statement of his accounts, and the court shall thereupon declare the dividends to be made among the creditors. [G. S. 1868, ch. 82, § 351, Oct. 31.]

(5414) Claim not due, etc. § 352. Every person to whom such convict shall be indebted for a valuable consideration, for a sum of money not due but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum to be distributed for the time unexpired of each credit. [G. S. 1868, ch. 82, § 352, Oct. 31.]

(5415) Set-off allowed. § 353. Where there are mutual credits between the convict and any person, they may be set off against each other; but no set-off shall be allowed of any claim or debt which shall have been purchased by or transferred to the person claiming its allowance after the conviction of the debtor. [G. S. 1868, ch. 82, § 353, Oct. 31.]

(5416) Money reserved. § 354. If at the time the dividend is made a suit is pending to establish any demand, the proportion which would be allotted to such demand if established, shall be reserved, with the necessary costs and expenses, to be applied according to the event of such suit. [G. S. 1868, ch. 82, § 354, Oct. 31.]

(5417) Dividend. § 355. When any dividend shall be ordered by the court, the trustee shall immediately cause a notice thereof to be published as before directed in relation to notices of their appointment, and shall make payments according to the order of the court. [G. S. 1868, ch. 82, § 355, Oct. 31.]

(5418) Order effects applied. § 356. The court shall have power from time to time to make, and cause the trustee to execute, orders for the application of any portion of the proceeds of estates in their hands for the support and maintenance of the family of such convict and the education of his children; to set apart and reserve to the use of such family any property, real or personal, when it may be done without prejudice to the rights of the creditors. [G. S. 1868, ch. 82, § 356, Oct. 31.]

(5419) Discharge of convict. § 357. When any such imprisoned convict shall be lawfully discharged from his imprisonment, the trustee so appointed shall deliver up to him all his estate, real and personal, and all money belonging to him remaining in his hands, after deducting a sufficient sum to satisfy expenses which have been incurred in the execution of his trust and his lawful commission. [G. S. 1868, ch. 82, § 357, Oct. 31.]

(5420) Death. § 358. In the case of death of such convict, the trustee shall in like manner account with the personal representatives, and deliver to them the property and effects remaining. [G. S. 1868, ch. 82, § 358, Oct. 31.]

(5421) Transfer and settlement. § 359. The transfer and settlement required to be made by either of the two preceding sections may be enforced by the court in a summary manner, on the application of the party interested. [G. S. 1868, ch. 82, § 359, Oct. 31.]

(5422) Compensation. § 360. The trustee shall be allowed, as a full compensation for his services, a commission, at the rate of five per cent. on the whole sum which shall have come into his hands by virtue of his trust. [G. S. 1868, ch. 82, § 360, Oct. 31.]

(5425) Work. § 363. That the board of county commissioners of any county in this state may, whenever they may deem it advisable so to do, properly shackle and work, under such rules and regulations as they may from time to time ordain and establish, each and every male prisoner committed to the jail of their respective counties for failing to pay the fine and costs adjudged against such prisoner on his conviction, and increased costs; and also any male person failing to pay the costs adjudged against him as the prosecuting witness in any criminal proceeding. [Laws 1881, ch. 127, § 1, May 10.]

(5426) County stone-yard. § 364. That the board of county commissioners may establish a county stone-yard, and work male prisoners mentioned in the first section of this act at breaking stone for use in macadamizing streets and roads,

under such rules as they may from time to time ordain and establish. [Laws 1881, ch. 127, § 2, May 10.]

(5427) **Stone sold, etc.** § 365. That the board of county commissioners of the proper county are authorized to sell or dispose of such stone as they may have had broken, on such terms as they may deem advisable; or in case they cannot sell the same, to use the same for the improvement of some designated road or street; and on making a sale of such stone, the money arising therefrom shall be used to pay for stone delivered at the county stone-yard, and the remainder shall be applied to the payment of the fine and costs standing against the person breaking the same. [Laws 1881, ch. 127, § 3, May 10.]

(5428) **Work on highway.** § 366. In case when a prisoner shall so desire, and shall enter an undertaking to the proper county, with good and sufficient sureties, to be approved by the county clerk, that he will do a given or specified amount of work on some highway designated by the chairman of the board of county commissioners of the proper county, and in a specified time, in full satisfaction of the said fine and costs charged against the said prisoner, the chairman of the board of county commissioners of the proper county is authorized to accept such undertaking, and direct the jailer to allow such prisoner to leave said jail for the purpose of doing the specified work. Said work may be done under the direction and control of some road overseer designated by the chairman of the board of county commissioners of the proper county; and when said work is done or performed in the manner and in the time designated in said undertaking, the chairman of the board of county commissioners shall so certify on said undertaking, and said prisoner shall then be discharged from all liability for the fine and costs for which he was imprisoned: *Provided*, For any good and sufficient reason the chairman of the board of county commissioners may extend the time for doing the work specified in such undertaking. [Laws 1881, ch. 127, § 4, May 10.]

(5429) **Duty of county attorney.** § 367. In case the

prisoner entering into the undertaking shall fail or neglect to do or perform the work or labor specified in the undertaking so given by him, the county attorney shall at once proceed to collect the amount specified in such undertaking, and no defense, except payment or the death of the principal in the undertaking during the time in which such principal was to do such work, shall be allowed. [Laws 1881, ch. 127, § 5, May 10.]

(5430) Allowance. § 368. Prisoners shall be allowed one dollar for each day's work performed by them in good faith under the provisions of this act, or if the prisoner prefer, the board of county commissioners may allow such prisoner a specified sum per cubic yard for breaking stone. The amount so earned by the day or by the cubic yard, when the same shall amount to the sum of the fine and costs, the same shall be deemed a full satisfaction of the fine and costs in the action for which the said prisoner was committed to the jail of the county. [Laws 1881, ch. 127, § 6, May 10.]

(5431) Costs. § 369. The county shall not be liable for any costs by reason of the provisions of this act otherwise than is herein provided, nor shall this act be construed as limiting the board of county commissioners of any county in their right to discharge any person from the jail in the manner as now provided by law. [Laws 1881, ch. 127, § 7, May 10.]

CHAPTER 83.—PROCEDURE BEFORE JUSTICES IN MISDEMEANORS.

(5433) Jurisdiction. § 1. Justices of the peace shall have concurrent original jurisdiction with the district court, co-extensive with their respective counties, in all cases of misdemeanor in which the fine cannot exceed five hundred dollars and the imprisonment cannot exceed one year, except as otherwise provided by law. [G. S. 1868, ch. 83, § 1, as amended by Laws 1869, ch. 61, § 1, March 1.]

(*In re Eddy*, 40 K. 592; *State v. Brooks*, 33 K. 708; *State v. Forbriger*, 34

K. 6, 7; *State v. Brooks*, 33 K. 708, 710; *In re Macke*, 31 K. 54; *State v. Watson*, 30 K. 285; *In re Donnelly*, 30 K. 191, 424; *Phillips v. Thralls*, 26 K. 780; *In re Pryor*, 18 K. 72, 75; *State v. Herold*, 9 K. 199; *State v. Volmer*, 6 K. 371; *Clark v. Spicer*, 6 K. 440.)

(5434) Unorganized counties. §1a. That any justice of the peace in any organized county to which an unorganized county is or may be attached for judicial purposes, and in which there shall be no justice of the peace, shall, in all criminal matters where a felony or misdemeanor is charged, have the same jurisdiction over any such unorganized county, and of offenses committed therein, as in such organized county; and their processes may be served by the sheriff or any constable of such organized county, and the offender be brought for hearing, and witnesses compelled to attend before such justice, the same as in cases arising in such organized county. [Laws 1877, ch. 140, § 1, February 25.]

(A. T. & S. F. Rld. Co. v. Rice, 36 K. 596.)

(5435) Warrant. §2. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of a person competent to testify, charging any person with the commission of any misdemeanor, he shall forthwith issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial. Such warrant shall be executed by the sheriff or constable of the county, or any person specially appointed, in writing, by the justice. [G. S. 1868, ch. 83, § 2, Oct. 31.]

(A. T. & S. F. Rld. Co. v. Rice, 36 K. 593; *State v. McLaughlin*, 35 K. 650; *In re Lewis*, 31 K. 71; *In re Donnelly*, 30 K. 191; *State v. Gleason*, 32 K. 251; *State v. Granville*, 26 K. 158; *State v. Watson*, 30 K. 281; *Prohibition Amendment Cases*, 24 K. 701; *Converse v. Safford*, 17 K. 15, 17; *Prell v. McDonald*, 7 K. 452.)

(5436) In presence of justice. §3. When any offense is committed in view of any justice of the peace, he may, by verbal direction to any constable, or, if no constable be present, to any citizen, cause the offender to be arrested and kept in custody for the space of one hour, unless he shall sooner be taken from such custody, by virtue of a warrant issued on com-

plaint, under oath. But a person so arrested shall not be confined in jail nor put upon trial until arrested by virtue of such warrant. [G. S. 1868, ch. 83, § 3, Oct. 31.]

(*State v. Coughlin*, 19 K. 537.)

(5437) Cause heard. § 4. On the return of any warrant issued by him, it shall be the duty of the justice, unless continuance be granted, forthwith to hear the cause. [G. S. 1868, ch. 83, § 4, Oct. 31.]

(5438) Trial postponed. § 5. Upon good cause shown, the justice may postpone the trial of any cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him. [G. S. 1868, ch. 83, § 5, Oct. 31.]

(5439) Commitment. § 6. If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the jail of the county, there to remain until the day fixed for the trial. [G. S. 1868, ch. 83, § 6, Oct. 31.]

(*Washburn v. Comm'rs of Shawnee Co.*, 37 K. 217.)

(5440) Notice to witnesses. § 7. When a trial under the provisions of this act shall be continued by the justice, it shall not be necessary for the justice to summon any witnesses who may be present at the continuance, but said justice shall verbally notify such witnesses as either party may require, to attend before him to testify in the cause on the day of trial, which verbal notice shall be as valid as a summons. [G. S. 1868, ch. 83, § 7, Oct. 31.]

(5441) Duty of justice. § 8. In all cases arising under this act, it shall be the duty of the justice of the peace acting in the case to summon the injured party, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment, if necessary. [G. S. 1868, ch. 83, § 8, Oct. 31.]

(5442) Arraignment and plea. § 9. The charge made

against the defendant shall be distinctly read to him, and he shall be required to plead thereto, which plea the justice shall enter on his docket; if the defendant refuse to plead, the justice shall enter the fact, with a plea of not guilty in his behalf. [G. S. 1868, ch. 83, § 9, Oct. 31.]

(5443) Jury. § 10. After the plea of the defendant has been entered, if he plead not guilty, the defendant or complainant or county attorney may demand a jury; but if no jury be demanded, the case may be tried by the justice. [G. S. 1868, ch. 83, § 10, Oct. 31.]

(5444) How formed. § 11. If a jury be demanded, the justice shall make a list, in writing, of the names of twenty-four inhabitants of the county qualified to serve as jurors in courts of record, from which list the defendant and the county attorney or complainant may strike out names alternately until each has struck six names, the defendant striking out the first name. [G. S. 1868, ch. 83, § 11, Oct. 31.]

(5445) The same; summons. § 12. In case the defendant or county attorney or complainant shall neglect to strike out such names, the justice shall proceed to strike out the names for either or both the parties so neglecting; and the justice shall issue a summons directed to the sheriff or any constable of the county, requiring him to summon the twelve persons whose names shall remain upon the list to appear before such justice, at a time and place to be named therein, to serve as jurors for the trial of such case. [G. S. 1868, ch. 83, § 12, Oct. 31.]

(5446) Six jurors. § 13. If the defendant consent, the cause may be tried before a jury of six men, to be selected from a list of twelve qualified inhabitants of the county, as provided in the last two sections, each party striking out three names from the list, the defendant striking out the first name. [G. S. 1868, ch. 83, § 13, Oct. 31.]

(Clark v. Spicer, 6 K. 440.)

(5447) Service of summons; deficiency. § 14. The summons shall be served personally upon the jurors, and

returned within the time therein specified. If any of the jurors named in such summons shall fail to attend, in pursuance thereof, or if there shall be any legal objection to any that shall appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause. The justice may compel any delinquent juror to attend by attachment. [G. S. 1868, ch. 83, § 14, Oct. 31.]

(5448) New jury summoned. § 15. If the officer to whom the summons for a jury shall have been delivered shall fail to return the same as thereby required, or if the jury shall fail to agree, and be discharged by the justice, a new jury shall be selected and summoned in the same manner; and the same proceedings shall thereupon be had as herein prescribed in respect to the first jury, unless the defendant shall consent to be tried by the justice, in which case the justice shall proceed to try the case as if no jury had been demanded. [G. S. 1868, ch. 83, § 15, Oct. 31.]

(5449) Challenges. § 16. In all trials for misdemeanors before a justice of the peace, either party may challenge jurors to the same extent as in trials for like offenses in the district court. [G. S. 1868, ch. 83, § 16, Oct. 31.]

(5450) Judgment. § 17. Whenever the defendant shall be tried under the provisions of this act, and found guilty, either by the justice or jury, or shall enter a plea of guilty, the court shall render judgment thereon, assessing such punishment, either by fine or imprisonment, or both, as the nature of the case may require and the law permit; in such case defendant shall, in addition to the fine or imprisonment, be adjudged to pay the costs, and to be committed to the county jail until the judgment be complied with. [G. S. 1868, ch. 83, § 17, Oct. 31.]

(5451) Discharge; costs. § 18. Whenever the defendant tried under the provisions of this act shall be acquitted, he shall be immediately discharged, and if the justice or jury

trying the case shall state in the finding that the complaint was malicious or without probable cause, the justice shall enter judgment against the complainant for all costs that shall have accrued in the proceedings had upon such complaint, and shall commit such complainant to jail until such costs be paid, unless he shall execute a bond to the state, in double the amount thereof, with security satisfactory to the justice, that he will pay such judgment within thirty days after the date of its rendition. [G. S. 1868, ch. 83, § 18, Oct. 31.]

(Comm'rs of Barton Co. v. Negbaur, 34 K. 285; *In re* Stoneberger, 31 K. 638; Shields v. Comm'rs of Shawnee Co., 5 K. 589; State v. Reisner, 20 K. 548; State v. McGilvray, 21 K. 680; *In re* Ebenhack, 17 K. 618.)

(5452) Judgment executed. § 19. The judgment of a justice of the peace under this act shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant, under the hand of the justice, to be directed to such officer, and reciting the judgment and commanding the officer to execute the same. [G. S. 1868, ch. 83, § 19, Oct. 31.]

(*In re* Stoneberger, 31 K. 639; *In re* Goldsmith, 24 K. 757.)

(5453) Proceedings. § 20. All proceedings, including the mode of procuring, and the grounds for, a change of venue, upon the trial of misdemeanors before a justice of the peace, shall be governed by the provisions of the code of criminal procedure, so far as the same are in their nature applicable, and in respect to which no provision is made by statute. [G. S. 1868, ch. 83, § 20, Oct. 31.]

(State v. Herold, 9 K. 199.)

(5454) When taken; bond; return. § 21. The defendant shall have the right of appeal from any judgment of a justice of the peace imposing fine or imprisonment, or both, under this act, to the court having criminal jurisdiction of the county, which appeal shall be taken immediately upon the rendition of such judgment, and shall stay all further proceedings upon such judgment. No appeal shall be granted or proceedings stayed unless the appellant shall, within twenty-four hours after

the rendition of such judgment, enter into a recognizance to the state of Kansas, in a sum and with sureties to be fixed and approved by the justice before whom said proceedings were had, conditioned for his appearance at the district or criminal court of the county, at the next term thereof, to answer the complaint against him. The justice from whose judgment the appeal is taken shall make return of the proceedings had before him, and shall certify the complaint and warrant, together with all recognizances, to said district or criminal court, on or before the first day of the term thereof next thereafter to be holden in the county; and he may also require the complainant and witnesses to enter into recognizance, with or without security, as he may deem best, to appear at said court at the time last aforesaid, and abide the order of said court. [G. S. 1868, ch. 83, § 21, Oct. 31.]

(City of Miltonvale v. Lanoue, 35 K. 603; State v. Forbriger, 34 K. 1, 6; State v. Anderson, 34 K. 116; State v. English, 34 K. 629; City of Leavenworth v. Weaver, 26 K. 392; State v. Anderson, 17 K. 89; State v. Lofland, 17 K. 390; State v. Harpster, 15 K. 322; State v. Volmer, 6 K. 379.)

(5455) Proceedings. § 22. The district or criminal court shall hear and determine any cause brought by appeal from a justice of the peace upon the original complaint, unless such complaint shall be found insufficient and defective, in which event the court, at any stage of the proceedings, shall order a new complaint to be filed therein, and the case shall proceed thereon the same in all respects as if the original complaint had not been set aside. [G. S. 1868, ch. 83, § 22, Oct. 31.]

(State v. Coulter, 40 K. 87; State v. Redford, 32 K. 200; State v. Forner, 32 K. 283; State v. Curtis, 29 K. 384; State v. Hinkle, 27 K. 308; City of Leavenworth v. Weaver, 26 K. 392; State v. Anderson, 17 K. 89; City of Burlington v. James, 17 K. 221; State v. Lofland, 17 K. 390; State v. Armell, 8 K. 293; State v. Young, 6 K. 37.)

(5456) Punishment, etc. § 23. If upon a trial in the district or criminal court the defendant shall be convicted, the court shall assess the punishment, and judgment shall be rendered against him accordingly, and for the costs before the justice of the peace; also for the costs in such court, and that he be com-

mitted to the county jail until the judgment be complied with. [G. S. 1868, ch. 83, § 23, Oct. 31.]

(*City of Miltonvale v. Lanoue*, 35 K. 605; *State v. Redford*, 32 K. 198; *City of Leavenworth v. Weaver*, 26 K. 392.)

(5457) Not cognizable. § 24. If in the progress of any trial before a justice of the peace, under the provisions of this act, it shall appear that the defendant ought to be put upon his trial for an offense not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the district or criminal court. [G. S. 1868, ch. 83, § 24, Oct. 31.]

(*In re Donnelly*, 30 K. 198; *State v. Watson*, 30 K. 285, 286.)

(5458) Certificate of conviction. § 25. Whenever a conviction shall be had before a justice of the peace under this act, he shall make a certificate of such conviction under his hand, in which it shall be sufficient briefly to state the offense charged and the conviction and judgment thereon, and if any fine has been collected, the amount and date thereof. Such certificate shall be filed by the magistrate within twenty days after such conviction, in the office of the county clerk of the county in which such conviction is had; and the original, or a duly certified copy thereof, shall be evidence, in all the courts of the state, of the facts therein contained. [G. S. 1868, ch. 83, § 25, Oct. 31.]

(5459) Fines. § 26. All fines imposed by any justice of the peace under the provisions of this act, if paid before the defendant is committed, shall be received by such justice, but if paid after the defendant be committed, shall be received by the sheriff; and any justice of the peace, or sheriff, shall, within thirty days after the receipt of any such fine, pay the same over to the county treasurer, and take duplicate receipts therefor, one of which he shall file with the county clerk. [G. S. 1868, ch. 83, § 26, Oct. 31.]

(*Comm'rs of Barton Co. v. Negbaur*, 34 K. 285; *Comm'rs of Labette Co. v. Keirse*, 28 K. 40.)

(5460) Neglect of justice, etc. § 28. Any justice of the peace who shall fail to file the certificate required to be filed by the twenty-fifth section of this act, and any justice or sheriff who shall fail to pay over to the county treasurer any fines received by them, as required by the twenty-sixth section of this act, shall be deemed guilty of a misdemeanor, and, upon conviction be punished by fine not less than ten nor more than five hundred dollars. [G. S. 1868, ch. 83, § 28, Oct. 31.]

(5461) County attorney prosecute. § 29. The county attorney, when requested by the justice of the peace, or the complainant, shall appear and prosecute all misdemeanors tried before any justice of the peace in his county, under this act. [G. S. 1868, ch. 83, § 29, Oct. 31.]

CHAPTER 83A.—PUBLIC HALLS.

(5467) Penalty. § 4. Any person, company or corporation who shall fail, neglect or refuse to comply with the provisions of this act within three months after it becomes a law shall be deemed guilty of a misdemeanor, and shall be subject to a fine of ten dollars per day for every day any such person, company or corporation shall continue in such failure, neglect, or refusal; and it shall be the duty of the county attorneys in the various counties of the state, upon complaint made to them of the violation of the provisions of this act, by any person, company or corporation, to at once commence action against such persons, company or corporation, in the district court of the proper county, to recover said fine. [Laws 1879, ch. 130, § 4, March 12.]

CHAPTER 86.—REGISTRATION OF ADULTS.

(5471) Sworn to; penalty. § 3. That the list of adult residents of each county, as provided in section one of this act, shall be sworn to as correct, and filed with the county clerk of

the proper county on or before July first of each year, and for every day thereafter that the assessor shall fail to make said return as above he shall be fined one hundred dollars and costs for each day so failing. [Laws 1867, ch. 113, § 3, March 7.]

CHAPTER 89.—ROADS AND HIGHWAYS.

(5485) Notice of opening; duties of road overseer.

§ 12. It shall be the duty of each and every road overseer to open or cause to be opened all county and state roads and highways which have been or may hereafter be laid out or established through any part of the district assigned to such overseer, first giving notice to the owner or owners, or their agent or agents, if residing in the county, or if such owner be a minor, idiot, or insane person, then to the guardian of such person, if a resident of the county through whose inclosed or cultivated lands such road is laid out or established, notifying such owners aforesaid to open said road through their lands within ninety days after service of such notice; and if the person or persons so notified do not open such road within the time named in such notice, it shall be lawful for such overseer or any person under his direction to enter upon said lands and open said road: *Provided*, If such notice be given between the first day of March and the first day of October, the notice shall designate the first day of January next as the time of opening such road; and the overseer shall keep the same in repair, and remove or cause to be removed all obstructions that may from time to time be found thereon, for which purpose the overseer is hereby authorized to enter upon any uncultivated land unincumbered by a crop, near or adjoining the public road, to dig and carry away any gravel, sand, or stone, and to purchase any timber which may be necessary to improve or repair said road, and to enter upon any land adjoining or lying near to said road, to make such drains or ditches through the same as he may deem necessary for the benefit of the roads, doing as little damage to said

lands as the nature of the case and the public good will permit; and the drains and ditches thus made shall be kept open by the overseer, if necessary, and shall not be obstructed by the owner or occupants of said land, or by any other person, under the penalty of being fined not exceeding ten dollars for each offense, before any justice of the peace of the county. Any overseer who shall take away gravel or stone for the purpose of repairing any road, or for building or repairing any bridge, shall upon the demand of the owner give a certificate, showing the quantity and value thereof, and the time when taken; and upon the presentation of such certificate to the trustee of the township in which such road or bridge is situated, the owner of such certificate shall be allowed by the township trustee such compensation as may be just and equitable. [Laws 1874, ch. 108, § 12, April 25.]

(*Wilson v. Janes*, 29 K. 249, 251; *Barrett v. Nelson*, 29 K. 594; *Stickel v. Stoddard*, 28 K. 720; *Poirier v. Fetter*, 20 K. 47; *Oliphant v. Comm'rs of Atchison Co.*, 18 K. 386.)

(5487) Posts and guide-boards. § 14. Each overseer, within his district, shall erect and keep up at the expense of the township, posts and guide-boards at the forks of every state and county road, containing an inscription in legible letters, directing the way and naming the distance to such cities as are situated on said road; and any road overseer failing to do so in a reasonable time, not to exceed six months, shall upon conviction thereof before any justice of the peace of the proper county be fined in any sum not exceeding five dollars, with costs of suit; and such fine, when collected, shall be paid into the county treasury for school purposes. [Laws 1874, ch. 108, § 14, April 25.]

(*City of Eudora v. Miller*, 30 K. 495.)

(5488) Streets, etc., highways. § 15. All avenues, streets and alleys in cities, which are or may hereafter be laid out agreeably to law, shall be and the same are hereby declared public highways: *Provided*, That the municipal authorities of any incorporated city may make, ordain and enforce such ordinances concerning the sidewalks of the streets of such city as shall be

deemed necessary to prevent such sidewalks from being used for the passage of horses, wagons or carriages, or hitching horses or other animals thereon. [Laws 1874, ch. 108, § 15, April 25.]

(5490) Penalty. § 17. If any person shall willfully demolish, throw down, alter or deface any milestone or guide-board on or at the forks of any roads, or shall willfully obstruct any such road by any means or in any manner whatever, every person so offending shall on conviction be adjudged guilty of a misdemeanor, and be punished by imprisonment in the county jail not exceeding three months, or by fine of not less than twenty nor more than one hundred dollars, or by both such fine and imprisonment, which fine shall be paid by the officer receiving the same into the county treasury for school purposes. And every person obstructing any such road as aforesaid shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction. [Laws 1874, ch. 108, § 17, April 25.]

(*State v. Horn*, 34 K. 556; *id.* 35 K. 717; *State v. Raypholtz*, 32 K. 450; *State v. Cummerford*, 16 K. 507.)

(5491) Road work. § 18. All male persons between twenty-one and forty-five years of age who have resided thirty days in this state, who are capable of performing labor on public highways, and who are not a township charge, shall be liable each year to perform two days' work of eight hours each on the public roads, under the direction of the road overseer within whose district they may respectively reside, or furnish a substitute to do the same, or pay the sum of one dollar and fifty cents per day to said road overseer, who shall receipt for the same, and expend it in repairs on the public roads within his district; and any moneys so received and not expended shall be paid over to his successor in office, who shall expend the same as above provided. [Laws 1874, ch. 108, § 18, April 25.]

(5493) Performance, penalty. § 20. Whenever it shall happen, in consequence of sickness or absence from home, or any other cause, that the two days' work aforesaid shall not be performed within the time specified in this act, the overseer

shall be authorized to require the performance of such work at any time prior to the first day of October then next ensuing; and in case any person shall neglect or refuse to do the two days' work or furnish a substitute, or pay the said sum of one dollar and fifty cents per day as provided in this act, he shall be deemed guilty of a misdemeanor, and shall be fined in the sum of five dollars for such refusal so to work, upon conviction before any justice of the peace of the township. If any person shall appear at the proper time and place as directed by the overseer, and neglect or refuse to do a reasonable day's work, according to his ability, he shall be liable the same as if he neglected or refused to appear or furnish a substitute, or pay the said sum of money as provided herein. [Laws 1874, ch. 108, § 20, April 25.]

(5500) Obstructed highway. § 27. If at any time any highway shall be obstructed or become impassable, or any bridge shall be impaired so as to be unsafe, it shall be the duty of the overseer of the district in which such obstruction, impassable road or impaired bridge may be situated, to cause such obstruction to be removed, or such road or bridge to be repaired forthwith, for which purpose he shall order out such number of persons liable for road tax in his district as will be necessary to make said repairs; and every person so ordered out, who shall refuse or neglect to attend with proper implements, or shall spend the time in idleness after reporting for labor, shall be liable to a fine of five dollars. [Laws 1874, ch. 108, § 27, April 25.]

(Smith v. Smith, 34 K. 293; Willis v. Sproule, 13 K. 258.)

(5503) Report of overseer; penalty. § 30. Each road overseer shall on or before the twentieth day of March of each year report to the township trustee the names of all persons subject to the two days' road tax for the preceding year, the names of those who have worked out said tax, the names of those who have paid said tax in money, and the names of those delinquent; and also all moneys received by him from all

sources, and how expended, and the account of said overseer of work performed by himself, which report shall be approved by said trustee before any final settlement shall be made with such road overseer. Each and every road overseer or other officer who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall under any pretense whatever give or sign a receipt or certificate for labor performed or money paid unless the labor shall have been performed or money paid prior to the signing or giving of such receipt or certificate—every overseer so offending shall forfeit for every such offense not less than five nor more than fifty dollars, to be recovered by an action before any justice of the peace within the township where such overseer may reside; and it is hereby made the duty of every county attorney to prosecute all offenses against the provisions of this act not otherwise provided for. [Laws 1874, ch. 108, § 30, April 25.]

(5504) Fast driving. § 31. It shall be the duty of the township trustees of the several townships in each county of this state to cause to be put up and kept in good repair at each end of each and every bridge erected by the county upon any highway in their respective townships, of a span of not less than twenty-five feet, a notice, which shall be printed in conspicuous letters, with the following words: "Five dollars fine for riding or driving over this bridge faster than a walk." [Laws 1874, ch. 108, § 31, April 25.]

(5506) Penalty. § 32. It shall be unlawful for any person or persons to ride or drive any horse, mule, ass or ox over any such bridge in this state faster than a walk, or drive more than fifty head of cattle on such bridge at one time; and any person who shall so unlawfully ride or drive such horse, mule, ass or ox over such bridge, or drive over the same more than fifty head of cattle at any one time, upon conviction thereof shall pay a fine of five dollars and costs of suit. [Laws 1874, ch. 108, § 32, April 25.]

(5517) Cockle-burs, etc. § 44. It shall be the duty of

the road overseers of the several counties of this state to remove, or cause to be removed, at least once each year, between the fifteenth day of June and the fifteenth day of July, in the public highways, all cockle-burs, Rocky Mountain sand-burs, burdocks, sunflowers, Canada thistles, and such other obnoxious weeds as may be injurious to the best interests of the farming community. [Laws 1883, ch. 150, § 1, March 11.]

(5518) Plowing highways. § 45. It shall be unlawful for any person or persons to hereafter plow up the public highways for the purpose of scouring plows, or for any other purpose, except it be under the direction of the overseer of public highways; and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in a sum not exceeding ten dollars, nor less than three dollars, with cost of suit. [Laws 1883, ch. 150, § 2, March 11.]

(5519) Duty of overseer. § 46. The road overseers in the several counties in this state are hereby directed to carry section one of this act into effect, under the provisions of chapter one hundred and eight (108) of the Session Laws of eighteen hundred and seventy-four. [Laws 1883, ch. 150, § 3, March 11.]

CHAPTER 90.—SABBATH.

(5533) Process. § 2. That any person who shall knowingly cause or procure any process, issued from a justice's court in a civil suit to be served on that day upon any such person, or who shall serve any such process made returnable on that day, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or both. [Laws 1864, ch. 98, § 2, July 1.]

(*Morris v. Shew*, 29 K. 661; *Johnson v. Brown*, 13 K. 531.)

(5534) Penalty. § 3. That any person who shall in like

manner procure any such suit, pending in such court, against any person of such religious faith and practice, to be adjourned for trial on that day, shall also be deemed guilty of a misdemeanor, and subject to a like punishment. [Laws 1864, ch. 98, § 3, July 1.]

CHAPTER 91A.—SALVAGE.

(5556) Penalty. § 5. If any person shall retain, sell or dispose of any such property wrecked, lost or adrift, without complying with each and all of the requirements of this act, such person shall be deemed guilty of the larceny of such property, and on conviction thereof shall be punished as for the unlawful taking, stealing and carrying away of such property. [Laws 1869, ch. 85, § 9, as amended by Laws 1873, ch. 127, § 3, April 4.]

CHAPTER 92.—SCHOOLS, RELATING TO.

(5574) Penalty. § 16. Every county superintendent who shall neglect or refuse to perform any act which it is his duty to perform, or shall corruptly or oppressively perform any such duty, he shall forfeit his office, and shall be liable on his official bond for all damages occasioned thereby, to be recovered in the name of the state, for the benefit of the proper party, district, or county. [Laws 1881, ch. 152, § 15, March 9.]

(5603) False report. § 42. Every clerk of a district who shall willfully sign a false report to the county superintendent of his county shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding three months. [Laws 1876, ch. 122, art. 4, § 10, April 7.]

(5605) Fine for failure. § 44. Any district clerk who shall fail to report the tax voted by his district, to the county clerk, as is provided by law, shall be liable to a fine of not less than fifty dollars; and it is hereby made the duty of the county

superintendent to have the provisions of this act enforced. [Laws 1876, ch. 122, art. 4, § 12, April 7.]

(5613) Not delivering record. § 52. Every school-district clerk or treasurer who shall neglect or refuse to deliver to his successor in office all records, books and papers belonging to his office, shall be subject to a fine not exceeding fifty dollars. [Laws 1876, ch. 122, art. 4, § 20, April 7.]

(5622) Penalty. § 61. That any member of any school-district board, or board of education, who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period not less than six months, or by both such fine and imprisonment; and any teacher who shall violate any of the provisions of this act shall be liable to immediate dismissal. [Laws 1879, ch. 157, § 2, March 16.]

(5623) Fines. § 62. All fines collected for any violation of this act shall be paid to the treasurer of the county where the suit is brought, for the support of common schools. [Laws 1879, ch. 157, § 3, March 16.]

(5624) Neglect to deliver books, etc. § 63. Every school-district clerk or treasurer who shall neglect or refuse to deliver to his successor in office all records, books and papers belonging to his office, shall be subject to a fine not exceeding fifty dollars. [Laws 1876, ch. 122, art. 4, § 29, April 7.]

(5632) Same. § 71. That in case any school-district treasurer shall neglect or refuse to comply with any of the provisions of this act, he shall on conviction thereof be deemed guilty of a misdemeanor, and fined in a sum not exceeding one hundred dollars for every day he shall so neglect or refuse to comply with the provisions of this act, and in addition thereto he shall forfeit and vacate his said office. [Laws 1877, ch. 173, § 4, March 14.]

(5637) Penalty for refusing to admit. § 76. The members of any district board willfully violating any of the pro-

visions of this article, or refusing the admission of any children into the common schools, shall forfeit to the county the sum of one hundred dollars each for every month so offending during which such schools are taught; and all moneys forfeited to the common-school fund of the county under this act shall be expended by the county superintendent for the education of such children in the school district thus denied equal educational advantages: *Provided*, That any member of said board who shall protest against the action of his said board in excluding any children from equal educational advantages, or in violating any of the provisions of this article, shall not be subject to the penalty herein named: *And provided further*, That the provisions of this act shall not apply to cities of the first or second class. [Laws 1877, ch. 170, § 2, March 4.]

(5681) Jurisdiction. § 120. Justices of the peace shall have jurisdiction in all cases in which a school district is a party interested, when the amount claimed by the plaintiff shall not exceed one hundred dollars; and the parties shall have the right of appeal, as in other cases. [Laws 1876, ch. 122, art. 9, § 1, April 7.]

(*Jones v. School District*, 8 K. 362.)

(5682) Collection. § 121. All fines and penalties not otherwise provided for in this act shall be collected by an action in any court of competent jurisdiction. [Laws 1876, ch. 122, art. 9, § 2, April 7.]

(5683) Penalty. § 122. If the state superintendent, or any county superintendent of public instruction, shall receive from the publisher of any school books, or from any other person interested in the sale or introduction of any book into the public schools in the state, any money or bonus in any manner as an inducement for the recommendation or introduction of any such book into the public schools of the state, such superintendent shall upon conviction thereof before any court of competent jurisdiction be found guilty of a misdemeanor, and shall be fined in a sum not less than one thousand dollars nor

exceeding five thousand dollars, or shall be imprisoned in the penitentiary for any time not less than one year nor more than five years, or both such fine and imprisonment. [Laws 1876, ch. 122, art. 9, § 3, April 7.]

(5720) Penalty for neglecting to levy. § 159. If said board of education, or other board, body or officer, whose duty it shall be to levy taxes for the payment of the coupons of the said bonds as herein provided, shall neglect or refuse to levy the tax or taxes for the payment of the coupons as by this act required, each member of such board or body, and each officer, who shall vote against or otherwise oppose the levy and collection of such tax or taxes, or shall do any act to prevent or delay such levy and collection, shall be liable jointly and severally to each and every holder of such bonds, or coupons of said bonds, which would have been payable from such taxes if the same had been levied for the whole amount unpaid on such coupons; and the same may be recovered in a civil action in any court of competent jurisdiction, and judgment rendered thereon may be collected and enforced in the same manner as other judgments are collected and enforced; and any such officer so neglecting or refusing to levy such tax shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in an amount equal to the amount which it may be shown should have been so levied during such year, or imprisoned in the county jail for a term not less than three nor more than twelve months. [Laws 1879, ch. 81, § 6, March 14.]

Bonds, cities of the first class. . . . Nor shall any bonds of any school district be issued or other obligation be given for the purpose of funding any indebtedness growing out of the support and maintenance of the schools or repairs for which the board is herein required to make provisions; and any and every member of a school board who shall be a party to creating any indebtedness for the payment of teachers' wages, repairs, incidental expenses and the maintenance for any one school year beyond the amount provided in the annual levy, or

who shall issue or cause to be issued bonds or other obligations of any district for the funding of any such indebtedness, shall be deemed to be guilty of a misdemeanor, and shall on conviction be punished by removal from office, and by a fine of not less than one hundred dollars nor more than five hundred dollars, and shall be personally liable for damages in an action which it shall be the duty of the city attorney of such city of the first class to prosecute. [Laws 1891, ch. 196, part § 2.]

Estimates for school buildings. Whenever it shall be necessary to raise funds to purchase a school-site or sites, to furnish, to repair, to make additions, or to build a school building, it shall be the duty of the board to prepare an estimate of the costs of such site or sites, repairs, additions, or buildings, together with the cost of furnishing the same, with estimates, shall be spread upon the records of the board, when adopted by a recorded yea-and-nay vote of two-thirds of all the members of the board at a regular meeting; and in every case the board shall complete said repairs, additions, or buildings, together with the furnishing of the same and the purchase of such site or sites, within the estimated costs thereof; and in no case shall any board create a deficiency or outstanding obligations in the purchase of such site or sites, the making of such repairs, or the erection of additions or buildings. And every member of a school board who shall be a party to creating a deficiency or outstanding obligations within the meaning of this section shall be deemed to be guilty of a misdemeanor, and shall on conviction be punished by removal from office and a fine of not less than one hundred dollars, and shall be personally liable for damages in any action which it shall be the duty of the city attorney of such city of the first class to prosecute, brought in the name of such school district, for the amount of such deficiency or outstanding obligations, which money when so collected shall be used to liquidate such deficiency or outstanding obligations: *Provided*, That any vacancy created in any school board under the operation of this section shall be filled as provided in section two of this act. [Laws 1891, ch. 196, § 3.]

(5762.) Issuing without authority. § 200. If any school-district officer whose duty it is under the provisions of this act to issue or assist in any manner in the issuance of the bonds of any school district, shall prepare, sign, or deliver, or aid, counsel or assist in preparing, signing, or delivering, or shall cause to be prepared, signed, or delivered, any bond or bonds of any school district, at any time before such bond or bonds are authorized by this act to be prepared, signed, or delivered, such officer shall be guilty of a felony, and upon conviction shall be fined in a sum of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the penitentiary for not less than one year and not longer than five years, or by both such fine and imprisonment. And if the board of directors of any school district, or any member thereof, shall use or dispose of any school-district bonds, or the money accruing from the sale of such bonds, in any other manner or for any other purpose than that for which the same was created or intended, he or they shall be liable to be punished by fine in any sum not less than one thousand dollars, by information or indictment in any court of competent jurisdiction, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [Laws 1879, ch. 49, § 6, March 14.]

(5770) Penalty for false swearing. § 207a. Every person who shall willfully and corruptly swear, testify or affirm falsely in any material matter, upon oath or affirmation, in any matter or proceeding relating to the proof of settlement or improvement upon school land, before the probate court, under the provisions of this act, shall be deemed guilty of perjury, and shall upon conviction thereof be punished by confinement and hard labor for a term of not more than seven years. [Laws 1886, ch. 152, § 2, Feb. 19.]

(5792) Trespass on lands. § 229. If any person shall cut down, injure, destroy or carry away any tree or trees growing upon any school lands that are or may hereafter be set apart for the use of schools, or any other state institutions, or cut, de-

stroy or carry away any wood, standing or being upon or growing on any school, college or university land, or shall dig up, quarry or carry away any stones, ore or mineral, lying or being upon such lands, the person committing such trespass shall be deemed guilty of a misdemeanor, and may be indicted and fined in a sum not less than double the amount of damages proved to have been committed, and not exceeding one thousand dollars, and confined in the county jail not less than one month and not more than six months. [Laws 1876, ch. 122, art. 14, § 26, April 7.]

(State v. Grewell, 19 K. 189.)

(5793) Complaint, etc. § 230. Whenever complaints shall be made in writing and upon oath, to any justice of the peace, that any person has violated the provisions of the preceding section of this act, it shall be the duty of such justice to issue his warrant, under his hand, reciting the substance of the complaint and commanding the officer to whom it is directed forthwith to apprehend the person so complained of, and bring him before such justice. [Laws 1876, ch. 122, art. 14, § 27, April 7.]

(5794) Procedure. § 231. Upon such person being brought before such justice, it shall be the duty of the justice to examine the complaint and the witnesses which either party may produce; and if it shall appear to the satisfaction of the justice that the person complained of is probably guilty, he shall require such person to enter into recognizance in such sum, not exceeding two thousand dollars, with two or more sufficient securities, as such justice may direct, to appear at the next term of the district court; and in default of such recognizance, the justice shall commit such person to jail to await the action of said district court. [Laws 1876, ch. 122, art. 14, § 28, April 7.]

(5795) Grand jury. § 232. It shall be the duty of each court having criminal jurisdiction to give this act in charge especially to the grand jury at each term. [Laws 1876, ch. 122, art. 14, § 29, April 7.]

(5796) Officers' duty. § 233. It shall be the duty of the county superintendent of public instruction, the district directors, clerks and treasurers, and all sheriffs and constables, to take no-

tice of all trespasses committed on school lands in their respective counties, and immediately file a complaint against any person violating this act before the proper authorities. [Laws 1876, ch. 122, art. 14, § 30, April 7.]

(5797) Shall prosecute. § 234. It shall be the duty of the county attorneys in their respective counties to prosecute all persons charged with the violation of this act. [Laws 1876, ch. 122, art. 14, § 31, April 7.]

(5798) Fines collected. § 235. All damages, fines and forfeitures collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the common-school fund. [Laws 1876, ch. 122, art. 14, § 32, April 7.]

(5800) Report sales to auditor; penalty. § 237. That it shall be the duty of the county clerk of each county to furnish the state auditor the report named in the first section of the act to which this is amendatory on or before the first day of October in each year, and that upon failure to make said report he shall be deemed guilty of neglect of duty and misconduct in office, and shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding sixty days, or by both such fine and imprisonment. [Laws 1871, ch. 139, § 2, as amended by Laws 1876, ch. 126, § 1, May 1.]

(5801) Duty of auditor. § 238. That it shall be the duty of the auditor of state, on the thirtieth day of October, or as soon thereafter as possible, annually, to report the failure and neglect of the several county clerks to make the required report to the attorney general of the state, who shall at once institute the necessary proceedings to punish said neglect of duty. [Laws 1876, ch. 126, § 2, May 1.]

(5803) Failure of treasurer to pay over. § 240. That upon the failure of the several county treasurers to pay into the state treasury the full amount received in their respective counties from the sale of school lands, or the interest paid thereon at each semi-annual settlement, it shall be the duty of the auditor of state immediately to require the prosecuting attorney of the proper county to prosecute the delinquent under the pro-

visions of section thirteen of the act to which this is amendatory. [Laws 1876, ch. 127, § 2, May 1.]

(5818) Penalty. § 255. Any county or city treasurer, or treasurer of any board of education, who shall neglect or refuse to perform the duties required of him by this act, shall be liable to the state in a sum equal to double the amount of such bonds or coupons remaining unpaid by reason of such neglect or refusal, which may be recovered in a suit at law against such treasurer and his bondsmen; and it is hereby made the duty of the county attorney of the proper county, upon the request of the attorney general, to prosecute all such suits. [Laws 1877, ch. 174, § 5, March 13.]

(5822) Indorsement to be made. § 259. That it shall be the duty of the auditor of state to indorse upon all bonds and coupons now belonging to the permanent school fund and deposited with the state treasurer, or which may be hereafter purchased by the commissioners of the permanent school fund, prior to the deposit of the same with the state treasurer, the following: "The property of and payable to the permanent school fund of the state of Kansas, and not negotiable or transferable," with his name thereto; and thereafter the said bonds shall not be transferable. [Laws 1877, ch. 172, § 3, March 4.]

(5823) Duty of state treasurer. § 260. That it shall be the duty of the state treasurer, immediately after collecting any interest on such bonds or the principal of the same, to file with the auditor a detailed statement or statements of the amount or amounts so collected, stating the name of the county, the number of the district, the number of the coupons or bonds paid by such district, and the amount paid; and the said treasurer shall cancel on the register in his office all coupons and bonds so paid. [Laws 1877, ch. 172, § 4, March 4.]

(5824) Cancel bonds. § 261. That immediately after the filing of such statement or statements by the treasurer, the auditor shall cancel such coupons or bonds as are designated in said statement or statements upon the register in his office, and

charge the treasurer with the amounts. [Laws 1877, ch. 172, § 5, March 4.]

(5826) Penalty. § 263. That any state treasurer who shall fail or refuse to comply with the provisions of section three and section five [4] of this act shall be deemed guilty of having converted the same to his own use, and shall upon conviction be subject to all the penalties provided for in section fifty-six of chapter one hundred and two, General Statutes of the state of Kansas. [Laws 1877, ch. 172, § 7, March 4.]

(5842) County treasurer collect. § 279. The county treasurer shall collect all moneys due the county for school purposes, from fines, forfeitures, or proceeds from the sale of estrays, and all moneys paid by persons as equivalent for exemption from military duty, and he shall, upon proper application of the district treasurer of any district in the county, pay over to the said district treasurer the amount apportioned to the district by the county superintendent. He shall also collect the delinquent taxes on real estate in any district, in the same manner as county taxes are collected, whenever such delinquent tax list shall have been lawfully reported and returned to him, and he shall pay the same over to the treasurer of the district to which such delinquent taxes are due; and if any county treasurer shall refuse to deliver over to the order of the county superintendent any school money in his possession, or shall use or permit to be used for any other purpose than is specified in this act, any school money in his possession, he shall on conviction thereof be adjudged guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year. [Laws 1876, ch. 122, art. 17, § 1, April 7.]

(5844) Justice's report. § 281. Each justice of the peace shall report to the county superintendent, on the first day of March and on the twenty-fifth day of July of each year, the amount received from the proceeds of fines and estrays during the six months preceding, and belonging to the school fund of the county; and each justice of the peace at the time of mak-

ing his report to the county superintendent shall promptly pay all of said proceeds to the county treasurer, to be disbursed by the county superintendent at the next ensuing semi-annual dividend. [Laws 1876, ch. 122, art. 17, § 2, April 7.]

(5847) Penalty. § 284. Any county treasurer who shall neglect or fail to pay over any school money in the treasury, on application, shall be subject to a fine of not less than five hundred dollars for every such neglect or failure. [Laws 1876, ch. 122, art. 17, § 6, April 7.]

(5851) Penalty. § 288. Any parent, guardian or other person, failing to comply with the provisions of this act [requiring children to attend school], shall upon conviction be deemed guilty of a misdemeanor, and fined in a sum not less than five nor more than ten dollars for the first offense, nor less than ten nor more than twenty dollars for the second and every subsequent offense. Said action shall be prosecuted in the name of the state of Kansas before any court of competent jurisdiction, and all fines so collected shall be paid into the county treasury for the support of common schools. [Laws 1874, ch. 123, § 2, August 1.]

(5852) Duty of school officers; penalty. § 289. It shall be the duty of any school director or president of the board of education to inquire into all cases of neglect of the duty prescribed in this act, and ascertain from the person neglecting, the reasons, if any, therefor, and shall forthwith proceed to secure the prosecution of any offense occurring under this act, and any director or president neglecting to secure such prosecution for such offense within ten days after a written notice has been served on him by any taxpayer in said district or city, unless the person so complained of shall be excused by the district or city board or board of education for reasons hereinbefore stated, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than twenty nor more than fifty dollars, which fine shall be prosecuted for and in the name of the state of Kansas; and such fine, when collected, shall be paid into the county treasury as in section two of this act. [Laws 1874, ch. 123, § 3, August 1.]

(5853) Costs. § 290. That upon the trial of any offense as charged herein, if upon such trial it shall be determined that such prosecution was malicious, then the costs in such case shall be adjudged against the complainant and collected as fines in other cases. [Laws 1874, ch. 123, § 4, August 1.]

UNORGANIZED COUNTIES.

AN ACT to attach all unorganized counties in the state of Kansas, now or hereafter attached to organized counties for judicial purposes, to the same counties for school purposes, and to provide for schools in unorganized counties.

(5856) Penalty. § 293. Every deputy superintendent who shall neglect or refuse to make and deliver to the county superintendent of public instruction his annual report, as required by this act, within the time limited therefor, shall be liable to pay to the school districts in said unorganized counties the full amount of money lost to the said school districts by such neglect or refusal, with the interest thereon, to be recovered by the treasurer of said school district in the name of said district. [Laws 1879, ch. 159, § 3, March 16.]

FOUR MONTHS' SCHOOL.

AN ACT relating to the maintenance of schools, and providing for a levy of a school tax.

(5863) Duty of superintendent; suit. . . . *Provided*, That any qualified voter of such district is hereby authorized to bring suit against such county superintendent in the name of and in behalf of the district for failure to comply with the provisions of this act; and all fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the county school fund of such county. [Laws 1881, ch. 150, part of § 3, May 10.]

TEXT-BOOK BOARD.

AN ACT to authorize school districts and boards of education in any county of the state to adopt a uniform series of text-books.

(5872) No change made. When a uniformity of text-books shall be adopted in any county in pursuance of the provisions of this act, no change shall be made in such county for a period

of five years from the date of such adoption of any particular series of text-books; but no member of any board of education, school board or text-book board, and no teacher while employed in teaching, shall act as agent for any author, publisher, or bookseller, nor shall any member of said boards, or any of them, or any employed teacher, directly or indirectly receive any gift, emolument or reward for his or her influence in recommending or introducing any book, school apparatus or furniture of any kind whatever; and any member of either of said boards, and any teacher who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished as provided in section 2 of chapter 157 of the Laws of 1879. [Laws 1885, ch. 171, § 9, March 6.]

CHAPTER 96A.—SINKING FUND.

(5899) Penalty. If any county, township or city treasurer shall neglect or refuse to perform the duties imposed by this act, he shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than one thousand dollars, and imprisonment in the penitentiary not less than one nor more than five years. [Laws 1874, ch. 124, § 8, April 25.]

(5901) Penalty. If any county, city or township treasurer shall loan, hypothecate or convert to his own use, in any manner whatever, any of the bonds held by him for the sinking fund, he shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than twice the amount of the bonds so loaned, hypothecated or converted to his own use, and by imprisonment in the penitentiary not less than two nor more than five years. [Laws 1874, ch. 124, § 10, April 25.]

(5902) Not to apply. The provisions of this act shall not apply to county, township or city bonds for which the sinking fund, when raised, is required by law to be paid to the state treasurer. [Laws 1874, ch. 124, § 11, April 25.]

CHAPTER 97.—SOLDIERS, SOLDIERS' ORPHANS AND CHILDREN.

AN ACT to enroll the late soldiers, their widows and orphans, of the late armies of the United States, residing in the state of Kansas, and providing penalties for the failure of officers to comply with the provisions thereof.

(5925) Penalty. Any officer intrusted with the custody of the records above provided for, who shall refuse or neglect to furnish within a reasonable length of time information or transcripts as hereinbefore provided, to the proper applicant or applicants, shall be deemed guilty of a misdemeanor, and be fined on conviction thereof in a sum not less than twenty-five dollars and not more than one hundred dollars. [Laws 1889, ch. 233, § 6, March 5.]

(5926) Penalty. Any county clerk, township trustee, or city or ward assessor who shall fail or refuse to perform any of the duties required of him by this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than five dollars nor more than one hundred dollars for each and every offense. [Laws 1889, ch. 235, § 7, March 5.]

AN ACT relating to appointment and employment of persons who served and have been honorably discharged from the army and navy of the United States.

(5928) Reduction. In making any reduction of force in any of the departments, cities or towns of this state, the officers of such department, city or town shall retain those persons who may be equally qualified, who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors. [Laws 1886, ch. 160, § 2, March 25.]

(5929) Misdemeanor. Any person knowingly and willfully violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction fined not less than five dollars nor more than twenty-five dollars for each offense. [Laws 1886, ch. 160, § 3, March 25.]

CHAPTER 99.—STATE INSTITUTIONS.

DENTISTRY.

(5944) Penalty. Any person who shall violate this act by practicing or attempting to practice dentistry within the state without first complying with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not to exceed less than ten dollars nor more than one hundred dollars. [Laws 1885, ch. 123, § 9, May 1.]

INVESTIGATION OF INSTITUTIONS.

(5960) Report. Having concluded their investigation, the committees shall, under the evidence and by a majority vote of the whole number of the committee, determine the truth or falsity of the charges. They shall make a complete report of their findings, and transmit the testimony in the case to the governor with such recommendations as they may deem just and appropriate. The governor shall thereupon either dismiss from the public service or reinstate the officer or officers named in the complaint, according to the findings and report of the committee. He shall also direct the attorney general in cases where the laws have been violated to institute such proceedings in the courts as may be necessary to protect the interests of the state and punish offenders. [Laws 1889, ch. 239, § 3, March 6.]

LABOR STATISTICS.

AN ACT creating a bureau of labor and industrial statistics, and defining the powers and duties of the same, and fixing the salary of the commissioner.

(5965) Power of. The commissioner shall have power to take and preserve testimony, examine witnesses under oath, and administer the same; and in the discharge of his duties may, under proper restriction, enter any public institution of the state, and any factory, workshop, or mine. The commissioner may also furnish and deliver a written or printed list of interrogatories to any person, company, or the proper officer of any corporation, and require full and complete answers to be made thereto and returned under oath; and if any person who

may be sworn to give testimony shall willfully fail or refuse to answer any question propounded to him concerning the subject of such examination, as provided in this act, or if any person to whom a written or printed list of interrogatories has been furnished by said commissioner shall neglect or refuse to fully answer and return the same under oath, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be fined in a sum not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. [Laws 1885, ch. 188, § 5, March 12.]

STATE LIBRARY.

(5999) Liability. If the librarian shall permit or allow any person not authorized by this act to remove a book from the library, he shall be liable on conviction thereof to pay a fine of not less than five nor more than fifty dollars for every book so taken. [Laws 1870, ch. 112, § 13, March 24.]

(6000) Of other person. If any person not authorized by this act shall take a book from the library, either with or without the consent of the librarian, he shall on conviction thereof be fined in any sum not less than ten nor more than fifty dollars, for every book so taken. [Laws 1870, ch. 112, § 14, March 24.]

STATE BOARD OF HEALTH.

(6030) Registration; carriers. The state board of health shall supervise the registration of marriages, births and deaths, and also the registration of forms of disease prevalent in the state; and the secretary of said board shall superintend the registration of the vital statistics of the state. They shall prepare the blank forms necessary for obtaining and preserving such records, and forward such of them to the health officers of local boards as may be required by physicians, assessors, local boards, and others whose duty it is to gather information in relation to the vital statistics of the state. The state board of health shall also prepare the forms and establish the rules by

which permits for transporting the dead bodies of persons for burial beyond the county where the death occurs; and in all cases the said board of health shall require the coupons to be attached to such permits, to be detached and preserved by every common carrier, or the person in charge of any vessel, railroad train or vehicle, to which dead bodies shall be delivered for transportation. Any violation of these rules shall subject the offender to a fine of ten dollars for each offense. [Laws 1885, ch. 129, § 5, March 17.]

(6033) Health officer. The health officer of the several local boards of health throughout the state immediately after his election shall notify the state board of the fact, and give his post-office address. He shall receive and distribute without delay in the county for which he is appointed all forms from the state board of health to the rightful persons, and all returns from physicians, assessors and local boards to the said state board of health, and he shall perform such other duties as this act, his local board or the state board of health may require of him. He shall receive for his services such reasonable compensation as his board may allow, to be paid out of the county treasury. And for any failure or neglect of said health officer to perform any of the duties prescribed in this act, he shall upon conviction thereof be fined ten dollars for each and every offense. [Laws 1885, ch. 129, § 8, March 17.]

(6034) Record of deaths. It shall be the duty of every physician practicing his profession in the state of Kansas to keep a record of the deaths occurring in his practice, or that may come to his knowledge where death occurs without medical attendance, noting the form of the disease, and as far as possible the cause which produced it, and to report the same to the local board of health where the same occurs, at the time and in the manner prescribed by the state board of health; and any failure to do so will subject said physician to a fine of ten dollars for each and every offense. [Laws 1885, ch. 129, § 9, March 17.]

(6037) Prosecution. All prosecutions under this act shall

be conducted by the county attorney for the county in which the offense was committed, in the court having jurisdiction; and all fines imposed and collected shall be paid into the county treasury, to the credit of the school fund. [Laws 1885, ch. 129, § 12, March 17.]

PHARMACY.

(6039) Registration. It shall hereafter be unlawful for any person within the state of Kansas to open or conduct any pharmacy or store for retailing, dispensing or compounding medicines or poisons, unless such person be a registered pharmacist within the meaning of this act, or shall employ a registered pharmacist to conduct the same. And it shall be unlawful for any person to compound and sell at retail any medicines or poisons, or to compound or dispense any physicians' prescriptions, unless such person be a registered pharmacist or a registered assistant pharmacist within the meaning of this act, except as hereinafter provided. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every such offense. [Laws 1885, ch. 150, § 1, May 1.]

(6047) Druggist responsible. Every proprietor or conductor of a drug store or a pharmacy shall be held responsible for the quality of all drugs, chemicals and medicines he may sell or dispense; and should he knowingly, intentionally and fraudulently adulterate or cause to be adulterated such drugs, chemicals, or medical preparations, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to a penalty not exceeding one hundred dollars, and in addition thereto his name be stricken from the register. [Laws 1885, ch. 150, § 10, May 1.]

(6049) Sell poisons. Pharmacists registered as herein provided shall have the right to keep and sell, under such restrictions as herein provided, all medicines and poisons authorized by the National, American or United States dispensatory pharmacopœia, as of recognized medicinal utility: *Provided,*

That nothing herein contained shall be construed so as to shield an apothecary or pharmacist who violates or in anywise abuses this trust for the legitimate and actual necessities of medicines, from the utmost rigor of the law relating to the sale of intoxicating liquors; and upon conviction of any violation of the prohibitory liquor law his name shall be stricken from the register. It shall be unlawful for any person, on and after the passage of this act, to retail any articles enumerated in schedules A, B, C, except as follows:

SCHEDULE A.—Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydro-cyanic acid, chloroform, strychnine, morphine, and all other poisonous vegetable alkaloids and their salts, essential oil of bitter almonds, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce.

SCHEDULE B.—Aconite, belladonna, colchicum, conium, nuxvomica, henbane, cantharides, creosote, digitalis, and their pharmaceutical preparations, croton oil, chloral hydrate, sulphate of zinc, sugar of lead, mineral acids, carbolic acid, oxalic acid, and all other virulent poisons.

SCHEDULE C.—Oil of savin, oil of tansy, ergot and its preparations, cotton root and its preparations, and all other active emmenagogues or abortives.

Articles enumerated in schedules A and B shall not be sold without distinctly labeling the box, vessel or paper in which the said poison is contained, and also the outside wrapper or cover, with the name of the article, the word "Poison," and the name and place of business of the seller. Nor shall it be lawful for any person to sell or deliver any poison enumerated in schedules A and B, unless upon due inquiry it be found that the purchaser is aware of its poisonous character, and represents that it is to be used for a legitimate purpose; nor shall it be lawful for any proprietor or owner of any drug store or pharmacy, or any registered pharmacist, to sell or deliver any articles included in the schedules A and B, without, before delivering the same

to the purchaser, causing an entry to be made in a book kept for that purpose, stating the date of sale, the article sold, the quantity thereof, the purpose for which it is represented by the purchaser to be required, the name of the dispenser, and the name and address of the purchaser, signed by himself; such book to be always open for inspection by the proper authorities, and to be preserved for at least five years. No articles enumerated in schedule C shall be sold except on the prescription of a legally-qualified physician. The provisions of this section shall not apply to the sales of poisons to practicing physicians and photographers, and to the dispensing of poisons in not unusual doses or quantities upon the prescriptions of licensed practitioners of medicine. All prescriptions of practicing physicians shall be retained by the dispenser. Any person procuring from any pharmacist articles enumerated in schedules A, B and C, under fraudulent representations, shall be deemed guilty of a misdemeanor, and be liable to a fine of not less than twenty-five nor more than one hundred dollars. [Laws 1885, ch. 150, § 12, as amended by Laws 1887, ch. 174, § 4, March 12.]

(6051) Complaints. It shall be the duty of the state board of pharmacy to investigate all complaints of disregard, non-compliance with or violations of the provisions of this act and the act to which this is supplemental and amendatory, and to bring all such cases to the notice of the county attorney of the county where such person is doing business; and it shall be the duty of such county attorney to diligently prosecute to effect any such violation. [Laws 1887, ch. 174, § 7, March 12.]

(6055) False representation. Any person who shall procure or attempt to procure registration for himself or for another under this act, by making or causing to be made any false representation, and any registered pharmacist who shall be in the habit of being intoxicated, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be liable to a penalty of not less than twenty-five nor more than one hundred dollars; and the name of the person so fraudulently regis-

tered shall be stricken from the register. [Laws 1885, ch. 150, § 13, May 1.]

STATE PRINTER AND PRINTING.

(6079) Penalty. The state printer shall perform all the duties required in the act relating to public printing, and such other duties as may be prescribed by law; and if any state printer shall delay any public work in order to do private printing or binding, he shall be deemed guilty of a misdemeanor, and on conviction thereof he shall be fined in a sum not less than fifty dollars and not more than five thousand dollars; and the executive council shall thereupon declare the office vacant, and the governor shall appoint a successor as hereinbefore provided. [Laws 1879, ch. 166, § 103, March 20.]

(6084) Style and manner of doing work. All the public printing shall be done in a neat, substantial and workmanlike manner, and shall be promptly performed and delivered, so that the public business shall not be delayed nor the public interests permitted to suffer from any failure to have the work done in proper time; and if any state printer shall delay any public work in order to do private printing or binding, he shall be deemed guilty of a misdemeanor, and on conviction thereof he shall be fined in the discretion of the court in a sum not less than fifty dollars and not more than five hundred dollars; and the governor shall thereupon declare the office vacant, and shall appoint a successor as hereinbefore provided. [Laws 1876, ch. 132, § 7, March 7.]

AN ACT to authorize and provide for the erection and completion of the west wing of the state house, and making appropriation therefor, and to provide for a special levy of taxes.

(6133) Not interested in contract. It shall not be lawful for any member of the board of state-house commissioners, or the architect and superintendent, or assistant superintendent, to be directly or indirectly interested in or derive any benefit or profit from any contract, employment or purchases connected with the building or with the action of the board; nor shall any of the above-named officers be the owner of or interested in any

claim against the board or the state growing out of the west wing of the state-house, otherwise than the compensation for services herein provided. Any of the above-named officers guilty of violating the provisions of this act or corruptly using his official position, shall be deemed guilty of a felony, and upon conviction shall be fined in any sum not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by both fine and imprisonment. [Laws 1879, ch. 168, § 6, March 7.]

AGRICULTURE.

AN ACT relating to agricultural organizations.

(6258) False pedigree of stock. Any person who shall knowingly and willfully furnish to the purchaser of any stock, or to any fair association, a false pedigree of such stock, shall upon conviction thereof be fined in any sum not less than fifty dollars nor more than one thousand dollars, or imprisonment in the county jail not less than three nor more than twelve months, or by both such fine and imprisonment. [Laws 1874, ch. 15, § 2, March 18.]

(6259) Gambling devices. Any person who shall sell pools, engage in any games of chance or gambling devices of any kind, or in the sale of intoxicating drinks, upon any fair ground in this state during the holding of any fair, and any officer of any fair association who shall authorize or permit such pool-selling, gambling, or the sale of intoxicating drinks, as aforesaid, shall upon conviction be fined not less than twenty-five nor more than one hundred dollars for each and every offense. [Laws 1874, ch. 15, § 3, March 18.]

(6260) Liability; in excess of appropriation. It shall be unlawful for the state board of agriculture to create or incur any liability or demand not provided for by existing appropriations; and no account, except for premiums, shall be allowed unless the same be itemized and verified by affidavit, setting forth that the same is just and correct, and remains due and unpaid; and for this purpose the secretary of the state board of agriculture is hereby authorized to administer oaths. The

state board of agriculture, or any member thereof, who shall violate the provisions of this act, shall become personally liable for such debt, and shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be subject to a fine of not less than fifty nor more than five hundred dollars. [Laws 1874, ch. 15, § 4, March 18.]

PENITENTIARY.

(6409) Property of convict. It shall be the duty of the warden to take charge of any property which any convict may have with him at the time of entering the penitentiary; and if the same is worth five dollars or over, the warden shall sell or preserve the same, and place the proceeds thereof at interest for the benefit of such convict or his representatives. Such warden shall keep an account of all such property, and shall pay the amount of proceeds thereof, or return the same to the convict when discharged, or to his legal representative in case of his death; and in case of the death of such convict without being released, if no legal representative shall demand such property within three years, then the same shall be applied to the use of this state. When any convict shall be discharged from the penitentiary by pardon, or otherwise, the warden shall furnish such convict with clothing, if he be not already provided for, not exceeding ten dollars in value, and such sum of money, not exceeding ten dollars, as the warden may deem necessary and proper. [G. S. 1868, ch. 77, § 16, March 17.]

(6411) Escape of convict. When any convict shall escape from the state penitentiary, it shall be the duty of the warden to take all proper measures for the apprehension of said convict; and for that purpose he may offer a reward, not exceeding one hundred dollars, for the apprehension of such convict. All suitable rewards and other sums of money necessarily paid for advertising and apprehending any convict that may escape from the penitentiary, shall be allowed by the auditor and paid out of the state treasury. The warden shall furnish, at the expense of the state, a bible to each of the convicts who can read, and such convicts as cannot read, he shall cause

to be instructed in the principles of reading, writing, and arithmetic. [G. S. 1868, ch. 77, § 18, March 17.]

(6423) Corporal punishment. There shall be no corporal punishment, and no painful and unusual kinds of punishment inflicted, such as binding the limbs or any member thereof, or placing and keeping the person in painful posture; and that the punishment of delinquent prisoners shall be restricted to the ball and chain, but so used as not to torture the person or limbs, and to close and solitary confinement, with such deprivation of light and such limitation in kind and quality of food as may, in the exercise of a sound discretion, produce distress without hazarding the health of the offender. [G. S. 1868, ch. 77, § 30, March 17.]

(6430) Escaping, or mutiny; penalty. That in case any convict shall escape from the penitentiary, or from the custody of any officer, or make an attempt to so escape, or shall join in any mutiny, or shall make an attempt to mutiny, or in any manner do any act to cause others to mutiny or join in a mutiny, while in confinement in the state penitentiary, or while in the custody of any officer, the said convict shall be taken by the warden before the district court of Leavenworth county, on information filed by the warden, and if the charge be sustained, the time said convict had served in the penitentiary prior to such act as charged shall not be counted as any part of the term of his sentence, but the said convict shall be sentenced by the court to confinement in the state penitentiary for the full term for which he or she was sentenced by the court before whom he or she was convicted and undergoing sentence at the time of violating the provisions of this section: *Provided*, That no limitation shall bar proceedings under this section. [Laws 1876, ch. 100, § 1, March 8.]

(6431) Penalty for aiding. That if any person, whether undergoing sentence in the penitentiary or not, shall furnish any implements or weapons, or information, for the purpose of aiding convicts to escape from the state penitentiary, or the custody of an officer, upon conviction thereof shall be sentenced by the

court for a term of not less than one year nor more than five years at hard labor in the state penitentiary. [Laws 1876, ch. 100, § 3, March 8.]

(6432) False imprisonment. That no informality of the order of commitment under which a person convicted of crime is held by the warden in the penitentiary shall be held a ground of action against the warden for false imprisonment, and no such action shall be maintained in the court: *Provided*, It shall appear that the warden attempted to faithfully carry out the judgment of the court making such order. [Laws 1869, ch. 101, § 1, March 8.]

(6438) Certain earnings. The convicts in the state penitentiary shall be permitted to participate in their earnings as follows, viz.: Each convict shall have allowed to him out of his earnings five per cent. upon each day's labor, the value of such day's labor being computed at seventy-five cents: *Provided, however*, That such convict shall have become entitled to a deduction from his sentence as provided in section twenty-eight of "An act in reference to the state penitentiary," approved March 3, 1868: *And provided further*, That any time said convict shall, from sickness or other means, be unable to perform his daily labor, or while he shall be under punishment for any violation of the rules of the penitentiary, shall not be estimated nor shall such convict receive any sum while disabled from sickness or other cause, nor while undergoing punishment for the violation of any prison rules or orders: *And provided further*, That for the violation of any rules or orders the warden and directors may declare the whole or any part of the convict's earnings forfeited. [Laws 1871, ch. 111, § 1, March 9.]

(6439) Payment. The warden shall, at the end of each month, commute and place to the credit of each convict the amount earned by him as aforesaid; and at the expiration of his sentence, the aggregate amount of his earnings, upon the basis aforesaid, shall be paid him out of the earnings of the penitentiary, and not from any other source: *Provided, how-*

ever, That if the convict shall, by good conduct, be entitled to the commutation of his sentence at the end of the first year, he may, if he elect, cause his earnings as aforesaid to be sent to his family or any other person or persons; and at the end of each successive year, if he be entitled to such commutation of his sentence as provided by law, may remit his earnings as aforesaid. [Laws 1871, ch. 111, § 2, March 9.]

(6440) Convict labor. That the labor of the prisoners in the state penitentiary may be hired to one or more individuals or corporations at a stipulated price per day for the labor of each prisoner, as hereinafter provided. [Laws 1874, ch. 51, § 1, March 25.]

REFORMATORY.

(6465) Who taken into. The said board of managers shall receive and take into said reformatory all male criminals between the ages of sixteen and twenty-five, and not known to have been previously sentenced to a state prison in this or any other country, who shall be legally sentenced to said reformatory on conviction of any criminal offense in any court having jurisdiction thereof; and said court may in its discretion sentence to said reformatory any such male person convicted of a crime punishable by imprisonment in the state penitentiary, between the ages of sixteen and twenty-five. The discipline to be observed in said prison shall be reformatory, and said managers shall have power to use means of reformation consistent with the improvement of inmates as they may deem expedient. Agricultural labor or mechanical industry may be resorted to by said managers as an instrument of reformation. [Laws 1885, ch. 187, § 9, March 12.]

(6466) Courts to sentence. All provisions of existing laws requiring the courts of this state to sentence criminals between the ages of sixteen and twenty-five, convicted of any criminal offense, to the penitentiary, shall from and after the appointment and confirmation of the board of managers provided for by section six of this act apply to said reformatory so far as to enable courts to sentence the class of prisoners men-

tioned in the ninth section of this act [¶6465] to said reformatory. [Laws 1885, ch. 187, § 10, March 12.]

INDUSTRIAL SCHOOL FOR GIRLS.

(6484) No member interested. No member of the board shall be interested, directly or indirectly, in contract, purchase or sale of any article whatever for or on account of said industrial school for girls, land or building, under a penalty on conviction of paying a fine of ten thousand dollars and imprisonment not to exceed five years in the state penitentiary. [Laws 1889, ch. 158, § 6, March 1.]

(6486) Board charitable institutions. The board of trustees of the charitable institutions of the state of Kansas shall have the management and control of said industrial school for girls, subject to the same provisions of law which govern its connection with the charitable institutions of the state, and may remove to the industrial school for girls any girl who may be detained in any of the charitable institutions of the state who in the judgment of the board is of like character, conduct and age as those who by the provisions of this act are admissible to the said industrial school for girls. [Laws 1889, ch. 158, § 8, March 1.]

(6488) Age of girls. Whenever any girl under the age of sixteen years shall be convicted of any offense known to the laws of the state and punishable by imprisonment, the court or justice, as the case may be, before whom such conviction shall be had, may at his discretion sentence such girl to the state industrial school for girls, or to such punishment as now provided by law for the same offense; if the sentence shall be to the industrial school for girls, then it shall be in the alternative to the state industrial school for girls, or to such punishment as would have been awarded if this act had not been passed. [Laws 1889, ch. 158, § 10, March 1.]

(6489) Courts, power. Courts of record and probate courts of the state shall have power to commit to the state industrial school for girls—first, any girl under sixteen years of

age who may be liable to punishment by imprisonment under any existing law of the state; second, any girl under sixteen years of age, with the consent of her parent or guardian, against whom any charge of committing any crime or misdemeanor shall have been made, the punishment of which on conviction would be confinement in jail or prison; third, any girl under sixteen years of age who is incorrigible, and habitually disregards the commands of her father, mother, or guardian, and who leads a vagrant life, or resorts to immoral places or practices, and neglects or refuses to perform labor suitable to her years and condition, and to attend school: *Provided*, That before said court shall commit such girl, he shall cause to be filed a complaint setting forth the charges complained of, in writing; and before he shall investigate such charges he shall give at least 'five days' notice to all persons interested in the filing of said complaint, and the time and place of hearing the same; and if on final hearing of said complaint he is satisfied that said complaint is true, and that it comes under the provisions of this act, he may commit. [Laws 1889, ch. 158, § 11, March 1.]

(6490) When proceedings arrested. If any girl under the age of sixteen years shall be arraigned for trial in any court in this state on any charges of violation of any laws of the state which would upon conviction subject her to the liability of imprisonment, the court may, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit said girl to said industrial school. All girls under the age of sixteen years who may be accused of any offense punishable under the laws of the state shall be admitted unless one of the parents, the guardian or other legal representatives demand a public trial, in which case all proceedings shall be in the usual form. [Laws 1889, ch. 158, § 12, March 1.]

(6491) Discharged. Every girl committed to the industrial school for girls shall remain until she is twenty-one years of age, unless sooner discharged, as hereinafter provided, or bound as an apprentice; but no girl shall be retained after the

superintendent shall have reported her fully reformed; and when any girl shall be discharged therefrom as reformed, or as having arrived at the age of twenty-one years, such discharge shall be a full and complete release from all penalties and disabilities which may have been created by such sentence. [Laws 1889, ch. 158, § 13, March 1.]

(6492) Entice away; harbor. If any person shall entice or attempt to entice away from said school any girl legally committed to the same, or shall harbor or conceal, or aid in harboring or concealing any girl who shall have escaped from such school, such persons shall upon conviction thereof be deemed guilty of a misdemeanor, and be punished by imprisonment in the county jail for not exceeding sixty days, or a fine of not less than twenty-five nor more than one hundred dollars. Any sheriff, policeman or constable shall have power, and it is hereby made his duty, to arrest any girl, when in his power to do so, who shall have escaped from said school, and return her thereto. [Laws 1889, ch. 158, § 14, March 1.]

(6493) Board of trustees; power. The board of trustees shall have full power to place any girl committed as herein described, during her minority, at such employment and cause her to be instructed in such branches of useful knowledge as may be suitable to her years and capacity, as they may see fit; and they may, with the consent of such girl, bind her out as an apprentice during her minority or for a shorter period, to learn such trade and employment as in their judgment will tend to her future benefit; and the president of said board shall for such purpose have power to execute and deliver on behalf of said board indentures of apprenticeship under the laws of the state, to be filed and kept among the records of the industrial school for girls, and it shall not be necessary to record or file them elsewhere. In case any girl so apprenticed shall prove untrustworthy and unreformed, the trustees may at their discretion permit such girl to be returned to the industrial school for girls, to be held in the same manner as before said apprenticeship, and may thereupon order the indenture for such girl to be

canceled; and if in the opinion of the trustees any girl apprenticed out by them shall have an unsuitable home, or if the person to whom such girl is indentured shall become unfit or incapable to properly raise or take care of her, the trustees may at their discretion return such girl to the school. [Laws 1889, ch. 158, § 15, March 1.]

(6494) Dismissed on probation. Whenever a girl is dismissed from the school to her parents, or to otherwise care for herself, (except when indentured as provided in this act,) she shall be dismissed on probation merely, and the board of trustees shall have power to send for and return her to the school when in the opinion of the majority of the members of said board the best interests of the girl will be promoted by such return. [Laws 1889, ch. 158, § 16, March 1.]

(6498) Admission. No girl who comes within the provisions of the third clause of section eleven of this act [¶6489] shall be received into the industrial school for girls until application for her admission is first made to the superintendent of the institution, who shall upon receipt of such application notify the person making the same that the superintendent is ready to receive said girl upon proper compliance with the requirements of the law and such rules governing the admission of the classes of girls mentioned as may be prescribed by the board of trustees. [Laws 1889, ch. 158, § 20, March 1.]

REFORM SCHOOL.

(6515) Sentence to school. Whenever any boy under the age of sixteen years shall be convicted of any offense known to the laws of this state, and punishable by imprisonment, the court or justice, as the case may be, before whom such conviction shall be had, may at its discretion sentence such boy to the state reform school, or to such punishment as is now provided by law for the same offense; and if the sentence shall be to the reform school, then it shall be in the alternative to the state reform school, or to such punishment as would have been awarded

if this act had not been passed. [Laws 1881, ch. 129, § 3, March 13.]

(6516) Power to commit. Courts of record and probate courts of the state shall have power to commit to the reform school — *First*, Any boy under sixteen years of age who may be liable to punishment by imprisonment under any existing law of the state, or any law that may be enacted and in force in the state; *second*, any boy under sixteen years of age, with the consent of his parent or guardian, against whom any charge of committing any crime or misdemeanor shall have been made, the punishment of which, on conviction, would be confinement in jail or prison; *third*, any boy under sixteen years of age who is incorrigible, and habitually disregards the commands of his father or mother or guardian, and who leads a vagrant life, or resorts to immoral places or practices, and neglects and refuses to perform labor suitable to his years and condition, and to attend school: *Provided*, That before said court shall commit such boy, he shall cause to be filed a complaint setting forth the charges complained of in writing; and before he shall investigate said charges he shall give at least five days' notice to all persons interested of the filing of said complaint, and the time and place of hearing of the same, and if on the final hearing of said complaint he is satisfied that said complaint is true, and that the case comes under the provisions of this act, he may commit. [Laws 1881, ch. 129, § 4, March 13.]

(6517) Proceedings. If any boy under the age of sixteen years shall be arraigned for trial in any court of the state, on any charge of violation of any of the laws of the state, which would upon conviction subject him to the liability of imprisonment, the court may with the consent of the accused arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit said boy to the reform school. [Laws 1881, ch. 129, § 5, March 13.]

(6518) Private examination. All boys under the age of sixteen years who may be accused of any offense punishable by the laws of the state shall be entitled to a private examina-

tion and trial, to which only the parties to the case shall be admitted, unless one of the parents, the guardian or other legal representative demand a public trial, in which case all proceedings shall be in the usual form. [Laws 1881, ch. 129, § 6, March 13.]

(6519) Remain, how long; discharge. Every boy committed to the reform school shall remain until he is twenty-one years of age, unless sooner discharged as hereinafter provided, or bound as an apprentice; but no boy shall be retained after the superintendent shall have reported him fully reformed; and whenever any boy shall be discharged therefrom as reformed, or as having arrived at the age of twenty-one years, such discharge shall be a full and complete release from all penalties and disabilities which may have been created by such sentence. [Laws 1881, ch. 129, § 7, March 13.]

(6520) Trustees give notice. Whenever there shall be as large a number of boys in the school as can properly be accommodated, it shall be the duty of the president of the board of trustees to give notice to the courts of the fact, by publication in some daily paper of general circulation published at the capital of the state, whereupon no boys shall be sent to the school by the said courts until notice shall be given them by the president of the board of trustees as aforesaid that more can be received. [Laws 1881, ch. 129, § 8, March 13.]

(6521) Enticing away. If any person shall entice or attempt to entice away from said school any boy legally committed to the same, or shall harbor or conceal, or aid in harboring or concealing any boy who shall have escaped from said school, such person shall upon conviction thereof be deemed guilty of a misdemeanor, and punished by imprisonment in the county jail for not exceeding sixty days, or a fine of not less than twenty-five nor more than one hundred dollars, which shall be paid to the treasurer of the board of trustees; and any sheriff, policeman or constable shall have power, and it is hereby made his duty, to arrest any boy, when in his power to do so, who

shall have escaped from said school, and return him thereto. [Laws 1881, ch. 129, § 9, March 13.]

(6528) Improper subject. Whenever by mistake or otherwise a boy is committed to the reform school who, upon trial, proves to be an improper subject for reform, and who if allowed to remain in the school would damage its best interests, it shall be the duty of the board of trustees to dismiss said boy to the care of his friends, at the first meeting of the board after becoming conversant with the facts in the case: *Provided*, That if any boy to be dismissed as aforesaid shall be held in the reform school under an alternative sentence of imprisonment, then in such case said boy shall be returned to the custody of the court which committed him, and said court shall be advised by the superintendent of the reform school concerning said boy's conduct while in said school; and said boy may, in the discretion of said court or the judge thereof, be remanded to imprisonment to serve such portion of his original alternative sentence to imprisonment as said court or the judge thereof may deem proper. [Laws 1881, ch. 129, § 16, March 13.]

(6529) Application. No boy who comes within the provisions of the third clause of section four of this act shall be received into the reform school until application for his admission is first made to the superintendent of the institution, who shall upon the receipt of any such application notify the person making the same that he is ready to receive said boy upon proper compliance with the requirements of law and such rules governing the admission of the classes of boys mentioned, as may be prescribed by the board of trustees. [Laws 1881, ch. 129, § 17, March 13.]

STATE TREASURER.

(6608) Embezzlement. If any state treasurer shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatsoever, in any way whatever, or shall use by way of investment in any kind of security, stock, loan, property, land, or merchandise, or in

any other manner or form whatever; or shall loan, with or without interest, to any company, corporation, association, or individual, any portion of the public money; or shall deposit with any company, corporation or individual any portion of the public money, or any other fund, property, bonds, securities, assets or effects of any kind received, controlled or held by him for safe-keeping, transfer, or disbursement, or in any other way or manner, or for any other purpose; or if any person shall advise, aid or in any manner participate in such act, every person so offending shall be deemed guilty of an embezzlement of so much of said moneys or other property as aforesaid as shall be thus converted, used, invested, loaned, deposited or paid out as aforesaid. [Laws 1879, ch. 166, § 63, March 20.]

(6609) Evidence sufficient. Upon the trial of such treasurer for embezzling public money, or of any person for advising, aiding or assisting in such embezzlement, it shall be sufficient evidence, for the purpose of showing a balance against such officer or person, to produce a transcript from the books of the state auditor. The refusal of such treasurer to pay any draft, order or warrant which may be drawn upon him by the proper officer for any public money in his hands, or to pay over to his successor any public moneys or securities promptly on the legal requirement of an authorized officer of the state or county, shall be taken, on the trial of such treasurer for embezzling such moneys or securities, as *prima facie* evidence of such embezzlement. [Laws 1879, ch. 166, § 64, March 20.]

(6610) Indorse warrants. It shall be the duty of the state treasurer, whenever any state warrant shall be presented for payment and paid, to indorse upon such warrant the date of payment and the amount of interest paid; and he shall require the person presenting the same for payment to sign his name thereto. And any state treasurer who shall receive any state warrant as aforesaid, and fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor. [Laws 1879, ch. 166, § 65, March 20.]

ATTORNEY GENERAL.

(6616) Duties. The attorney general shall appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the state shall be interested or a party, and shall also, when required by the governor or either branch of the legislature, appear for the state and prosecute or defend in any other court or before any officer in any cause or matter, civil or criminal, in which this state may be a party or interested. [Laws 1879, ch. 166, § 71, March 20.]

(6617) Suits. The attorney general shall, at the request of the governor, secretary of state, auditor, treasurer, or superintendent of public instruction, prosecute any official bond or any contract in which the state is interested upon a breach thereof, and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their departments. [Laws 1879, ch. 166, § 72, March 20.]

SCHOOL FUND COMMISSIONERS.

(6661) Commissioners and boards, duties of. That the several boards of county commissioners, boards of education of cities of the first and second class, and the officers of school districts and townships, and all other municipal officers who have charge of the sale of any bonds which the board of commissioners of the state permanent school fund or the loan commissioner of the state agricultural college are authorized to purchase under the law, are hereby directed to sell such bonds to said board of commissioners of the state permanent school fund or the loan commissioner of the state agricultural college, unless they can obtain a higher price therefor from other persons; and it shall be unlawful for any such municipal boards, members thereof, or other municipal officers, to sell any such bonds at par or less than par without having first offered such bonds to said board of commissioners of the state permanent school fund and the loan commissioner of the state agricultural college; and every municipal board or member thereof, or other municipal officer, who shall sell any such bonds to any other

person at par, or for a sum less than par with interest accrued thereon to date of delivery of same, without having first given the board of commissioners of the state permanent school fund and the loan commissioner of the state agricultural college an opportunity to purchase same at par, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months. [Laws 1887, ch. 58, § 1, as amended by Laws 1889, ch. 76, § 1, March 20.]

GENERAL PROVISIONS.

(6673) Accounts; embezzlement. Where an appropriation shall be made as a contingent fund for any office or officer, or any other purpose, to be expended for the state, the officer or person having charge of such fund shall keep an account therewith, showing when, to whom, and for what purpose any portion of said fund has been expended; and if any officer or person shall take or present any voucher for a greater sum of money than was actually paid or expended for the purpose stated or indicated in or by such voucher, he shall be deemed guilty of embezzlement of the amount so falsely included in such voucher in excess of the sum actually paid or expended. [Laws 1879, ch. 166, § 131, March 20.]

(6675) Contract; restriction. That any officer or agent of the state who shall be empowered to expend any public moneys, or to direct such expenditures, is hereby prohibited from making any contract for the erection or repair of any building, or for any other purpose, whereby the expenditure of any greater sum of money shall be contemplated, agreed to, or required, than is expressly authorized by law; and any officer or agent of the state violating this law shall be deemed guilty of embezzlement of the amount in excess of that expressly authorized by law, and upon conviction shall be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months. [Laws 1886, ch. 103, § 1, Feb. 27.]

(6676) Account; voucher. That whenever an appropriation shall be made by the state for any purpose, to be expended by the state, the officer or person having charge of such fund shall keep an account thereof, showing when, to whom and for what purpose any portion of said fund has been expended; and if any officer, agent, trustee, director or any other person shall grant, allow, audit, take or present any voucher for a greater sum of money than was actually appropriated, paid or expended for the purpose stated or indicated in said appropriation, he shall be deemed guilty of embezzlement, and shall be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months. [Laws 1886, ch. 103, § 2, Feb. 27.]

(6679) Reward. Whenever any criminal, charged with a capital offense, or with any felony, shall escape, or whenever any heinous crime has been committed in this state, the governor may offer a reward for the apprehension and delivery, or conviction of such criminal, or the perpetrator of such crime: *Provided*, That in no case shall the reward thus offered exceed the sum of five hundred dollars. [G. S. 1868, ch. 102, § 4, Oct. 31.]

CHAPTER 105.—STOCK.

(6707) Penalty. If any person shall sell or dispose of any stray, or take the same out of this state before the title shall have vested in him, he shall forfeit and pay to the county double the value of such stray, and may also be punished by fine not exceeding twenty dollars, and imprisonment in the county jail not to exceed thirty days. [G. S. 1868, ch. 105, § 20, Oct. 31.]

(6708) Unlawfully taking up. If any person unlawfully takes up any stray, and fails to comply with the provisions of this act, or uses or works such stray before advertising the same, or shall drive the same on his premises for the purpose of taking up the same, or shall keep the same out of the county

more than five days at one time, before he acquires a title to it, he shall forfeit to the county not exceeding fifty dollars. [G. S. 1868, ch. 105, § 21, Oct. 31.]

(6710) Jurisdiction. Justices of the peace, in their respective counties, shall have jurisdiction and take cognizance of all actions for the violation of this article, and enforce all the penalties and fines against persons who may be guilty of such violations; and it shall be the duty of any county officer who knows of a violation of this article to report the same to the nearest justice of the peace of the county. [G. S. 1868, ch. 105, § 23, Oct. 31.]

(6711) Issuance of writ. Upon the affidavit of any citizen of the county wherein such strays may be held or so taken up being filed with any justice of the peace of the county, setting forth that any person, naming him, has disposed of any stray, or in any manner violated the provisions of this article, and describing the stray in full, said justice shall issue his summons and writ, as is provided in civil cases, commanding the officer to take the stray into his possession and summons the person who may have thus violated this article to appear and answer, as is provided in cases of replevin. [G. S. 1868, ch. 105, § 24, Oct. 31.]

(6712) Trial. All trials before a justice of the peace, under this article, if demanded by the defendant, shall be by jury of six competent men, to be selected as in civil cases, who shall, if they find the defendant guilty, assess the fine to be paid by him, or the imprisonment to be inflicted, subject to an appeal, as in civil cases. [G. S. 1868, ch. 105, § 25, Oct. 31.]

(6713) Judgment, etc. If, upon examination and hearing, it shall appear to said justice that this article has been violated, he shall assess the fine as herein provided, and shall order the officer to deliver the stray to any person who will give good and sufficient bond to the county to keep said stray until the expiration of the twelve months, at which time the title shall vest in him, as it would have done in the taker-up; and he shall

be subject to the same liabilities and requirements as the taker-up. [G. S. 1868, ch. 105, § 26, Oct. 31.]

(6714) Fines. All fines collected under the provisions of this article shall be paid into the county treasury, for the use of the common-school fund. [G. S. 1868, ch. 105, § 27, Oct. 31.]

(6719) Penalty. If any county clerk or justice of the peace fails to perform the duties enjoined upon him by this article, he shall forfeit and pay to the county not less than five nor more than fifty dollars, and pay to the party injured not less than five nor more than one hundred dollars. [G. S. 1868, ch. 105, § 32, Oct. 31.]

STALLIONS AND JACKS.

(6720) Run at large. If any stallion or jack over the age of two years be permitted to run at large, the owner shall be notified thereof, and if said owner fail or refuse to take such stallion or jack and confine the same, he shall be fined for the first offense five dollars and for every subsequent offense ten dollars, in a criminal prosecution before any justice of the peace in the county. [G. S. 1868, ch. 105, § 33, Oct. 31.]

(6721) Damages; fine. If any stallion or jack kept for the purpose of breeding shall escape from the owner by his neglect, and the same shall be taken up, the owner thereof shall be bound for all damages sustained by any person, and shall be fined for the first offense five dollars and for every subsequent offense ten dollars, as specified in the preceding section. [G. S. 1868, ch. 105, § 34, Oct. 31.]

(6724) Damages. If any stallion or jack shall escape from his owner by accident, he shall be liable for all damage, but shall not be liable to be fined, as above provided. [G. S. 1868, ch. 105, § 37, Oct. 31.]

BULLS AND BOARS.

(6725) Bull or boar. If any bull over one year old, or boar over three months old, be permitted to run at large, the owner of the same shall be guilty of a misdemeanor, and on conviction thereof shall be fined for the first offense five dollars and

for every subsequent offense shall be fined ten dollars. [G. S. 1868, ch. 105, § 38, as amended by Laws 1872, ch. 194, § 1, March 14.]

SHEEP.

(6727) Contagious disease. It shall not be lawful for the owner of sheep, or any person having the same in charge, to import or drive into this state sheep having any contagious disease; and any person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than fifty and not exceeding two hundred dollars. [G. S. 1868, ch. 105, § 40, as amended by Laws 1881, ch. 162, § 1, March 13.]

(6728) Disposition of. Any person being the owner of sheep, or having the same in charge, who shall turn out or suffer any sheep having any contagious disease to run at large upon any common highway or uninclosed lands, or shall sell or dispose of any sheep that are diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum not less than fifty and not exceeding two hundred dollars. [G. S. 1868, ch. 105, § 41, as amended by Laws 1881, ch. 162, § 2, March 13.]

AN ACT to provide for the appointment of sheep inspectors, prescribing their duties.

(6734) [Owner or agent to dip or otherwise treat diseased sheep.]

(6735) Penalty. Should such owner or agent fail to comply with the provisions of section two of this act [6734], he or they shall be subject to a fine not to exceed one hundred dollars, and such fine shall be a lien on such sheep, and shall be recovered as an action of debt, together with all costs, in any court of competent jurisdiction; and it is hereby made the duty of the county commissioners and county attorney to prosecute such cases of negligence. [Laws 1883, ch. 144, § 3, July 1.]

(6738) Same; entering state; penalty. Upon the arrival of any flock of sheep within the state, the owner or agent shall notify the inspector of the county in which such sheep are being held, and he shall proceed as in section five, and his fees

shall be the same: *Provided, however,* That sheep in transport on board of cars, or passing through the state on what is known as the "cattle trail," with a fixed dead-line, shall not come within the provisions of this act. Any violation of sections five or six shall subject the owner to a fine not to exceed one hundred dollars, and shall be a lien, and may be collected as in section three of this act. [Laws 1883, ch. 144, § 6, July 1.]

MARKS AND BRANDS.

(6750) Penalty. If any person shall willfully mark any of his horses, mules, cattle, sheep or hogs, with the same mark or brand previously recorded by any resident of the same county, and while the same marks or brands shall be used by any such resident, the person so offending shall forfeit for every such offense five dollars, to be recovered before any justice of the peace of the proper county. If any person shall willfully mark or brand the horses, mules, sheep or hogs of any other person with his own brand or mark, the person so offending shall forfeit for every such offense not less than ten nor more than fifty dollars, to be recovered before any justice of the peace of the proper county; and if any person shall willfully destroy or alter any mark or brand upon any horses, mules, cattle, sheep or hogs, the property of another, the person so offending shall, on conviction thereof before any justice of the peace, forfeit and pay for every such offense a sum not less than ten nor more than fifty dollars, and shall, moreover, pay to the injured party double damage. [G. S. 1868, ch. 105, § 56, Oct. 31.]

TEXAS CATTLE.

(6754) Diseased cattle. That no person or persons shall drive or cause to be driven into or through any county in this state any cattle diseased with a disease known as Texas, splenic or Spanish fever. Any person violating any provision of this act shall on conviction be adjudged guilty of a misdemeanor, and shall be fined not less than one hundred and not more than one thousand dollars, and be imprisoned in the county jail not

less than thirty days and not more than one year. [Laws 1881, ch. 161, § 1, March 12.]

(Mo. Pac. Rly. Co. v. Finley, 38 K. 550; Patee v. Adams, 37 K. 133; Stager v. Harrington, 27 K. 414.)

(6755) Held until judgment rendered. That upon the arrest of any person or persons charged with the violation of any of the provisions of this act, all cattle found in his or their possession shall, during the arrest and trial of the offenders, be stopped and taken charge of by the officer or person executing the warrant of arrest, to abide the judgment of the court before whom the offender or offenders shall be tried. [Laws 1881, ch. 161, § 2, March 12.]

(6759) Evidence. That, in the trial of any person or persons charged with the violation of any of the provisions of this act, proof that the cattle, of which such person or persons are charged with driving, are wild and of undomesticated habits, shall be taken as *prima facie* evidence that said cattle are diseased with the disease known as Texas, splenic or Spanish fever. [Laws 1881, ch. 161, § 6, March 12.]

(Mo. Pac. Rly. Co. v. Finley, 38 K. 550.)

(6761) Jurisdiction. Justices of the peace, within their respective counties, shall have criminal jurisdiction in all cases arising under the provisions of this act. [Laws 1881, ch. 161, § 8, March 12.]

(Willcox v. Johnson, 34 K. 655.)

(6762) County attorney. It shall be the duty of the prosecuting attorney of the proper county to prosecute on behalf of the state all criminal cases arising under this act. [Laws 1881, ch. 161, § 9, March 12.]

(6771) Unlawful to drive Texas cattle. No person or persons shall, between the first day of February and the first day of December of any year, drive or cause to be driven into or through any county or part thereof in this state, or turn upon or cause to be turned or kept upon any highway, range, common or pasture within this state, any cattle capable of communicating or liable to impart what is known as Texas, splenic

or Spanish fever. Any persons violating any provisions of this act shall upon conviction thereof be adjudged guilty of a misdemeanor, and shall for each offense be fined not less than five hundred dollars nor more than two thousand dollars, or be imprisoned in the county jail not less than thirty days and not more than one year, or by both such fine and imprisonment.

(6777) Jurisdiction. Justices of the peace within their respective counties shall have criminal jurisdiction in all cases arising under the provisions of this act. [Laws 1885, ch. 191, § 7, March 12.]

(6778) County attorney. It shall be the duty of the prosecuting attorney of the proper county to prosecute on behalf of the state all criminal cases arising under this act. [Laws 1885, ch. 191, § 8, March 12.]

MISCELLANEOUS.

(6780) Glanders. It shall not be lawful for any person to use, let, sell, or permit to run at large, any horse, mule, or ass, diseased with glanders. [Laws 1869, ch. 114, § 1, March 2.]

(6781) Penalty. Any person violating any of the provisions of this act, upon conviction shall be fined any sum not less than five dollars nor more than one hundred dollars. [Laws 1869, ch. 114, § 2, March 2.]

AN Act to determine and provide what animals shall not be permitted to run at large in the several counties in this state.

(6792) Penalty. Any person who shall, in violation of any order made pursuant to the provisions of the foregoing section, permit or allow any of the cattle or animals designated in such order, owned by him or under his control, to run at large in such county, shall be deemed guilty of a misdemeanor, and may be prosecuted therefor before any justice of the peace of said county, or before the district court, and upon conviction thereof shall be punished by fine for every animal he shall permit or allow to run at large, in a sum not less than one dollar nor more than ten dollars for each day said animal shall be shown to have so run at large. Such action shall be prosecuted in the name of the state, and upon the complaint of any person having knowl-

edge, or who may be advised of the violation of said order; and the pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order, committed after the commencement of such pending action. [Laws 1874, ch. 128, § 2, March 11.]

(6797) Breeding stock; penalty. Any person who shall keep any stock of any kind or description for hire for breeding purposes, and shall willfully misrepresent or in any manner knowingly falsely advertise the pedigree, stock or blood of such animal, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in a county jail for a period not exceeding one year, or by both such fine and imprisonment, and shall forfeit to his patrons all pay for services rendered for that season. [Laws 1885, ch. 192, § 1, March 14.]

STATE VETERINARIAN—SANITARY COMMISSION.

(6809) Railroads; duty. It shall be the duty of the railway corporations doing business in this state to cleanse and disinfect the cars used by them in transporting stock in this state, at such times and places as the commission may designate, whenever in the opinion of the commission any such order may be necessary to prevent the spreading of infectious or contagious diseases. Any such corporation violating any of the provisions of this section shall be liable to a penalty of five hundred dollars for each offense, to be recovered in a civil action to be prosecuted under the direction of the attorney general in the name of the state of Kansas. [Laws 1884, ch. 2, § 8, March 25.]

(6813) Bringing into state. Any person who shall knowingly bring into this state any domestic animal which is affected with any contagious or infectious disease, or any animal which has been exposed to any contagious or infectious disease, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred nor more than five thousand dollars. [Laws 1884, ch. 2, § 12, March 25.]

(6814) Examination. Any person who owns, or is in

possession of, live stock which is, or which is suspected or reported to be, affected with any infectious or contagious disease, who shall refuse to allow the state veterinarian, or other authorized officer or officers, to examine such stock, or shall hinder or obstruct the state veterinarian, or other authorized officer or officers, in any examination of, or in an attempt to examine, such stock, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars. [Laws 1884, ch. 2, § 13, March 25.]

(6815) Misdemeanor under act. Any person who shall have in his possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be so affected, or after having received notice that such animal is so affected, who shall permit such animal to run at large, or who shall keep such animal where other domestic animals not affected by or previously exposed to such disease may be exposed to its contagion or infection, or who shall sell, ship, drive, trade, or give away such diseased animal or animals which have been exposed to such infection or contagion, or who shall move or drive any domestic animal in violation of any direction, rule, regulation, or order establishing and regulating quarantine, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each of such diseased or exposed domestic animals which he shall permit to run at large, or keep, or sell, ship, drive, trade, or give away in violation of the provisions of this act: *Provided*, That any owner of any domestic animal which has been affected with or exposed to any contagious or infectious disease may dispose of the same, after having obtained from the state veterinarian a bill of health for such animal. [Laws 1884, ch. 2, § 14, March 25.]

(6821) Officers' duties. The commissioners shall have the power to call upon any sheriff, under sheriff, deputy sheriff or constable to execute their orders, and such officers shall obey the orders of said commissioners, and the officers performing

such duties shall receive compensation therefor as is prescribed by law for like services, to be paid as other expenses of said commission as hereinbefore provided; and any officer may arrest on view, and take before any magistrate of the county, any person found violating the provisions of this act, and such officer shall immediately notify the county attorney of such arrest, and he shall prosecute the person so offending according to law. [Laws 1884, ch. 2, § 20, March 25.]

(6822) Penalty. Except as otherwise provided in this act, any person who shall violate, disregard, or evade, or attempt to violate, disregard or evade any of the provisions of this act, or who shall violate, disregard, or evade, or attempt to violate, disregard or evade any of the rules, regulations, orders or directions of the live-stock sanitary commission establishing and governing quarantine, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five thousand dollars. [Laws 1884, ch. 2, § 21, March 25.]

CHAPTER 107.—TAXATION.

(6852) Duty of county clerk; false certificate. . . .

And it shall be the duty of the county clerk, when required by any person having stock in charge, to give a certificate of assessment, showing the number, kind, location and value of stock assessed, and such certificate shall be evidence of the legal assessment of such stock for that year: *And provided further*, If any county clerk shall fraudulently give to any person such certificate, or if any person shall in any manner illegally obtain any such certificate, he shall on conviction thereof be punished by a fine in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment. [Laws 1881, ch. 34, part of § 1, March 4.]

(Fields v. Russell, 38 K. 720; Graham v. Comm'rs of Chautauqua Co., 21 K. 473.)

RAILWAYS.

(6877) Penalty for failure. In case of failure to make such statements or schedules to the auditor of state, such person, company or corporation so failing to make returns, shall forfeit, as a penalty, not less than one thousand dollars for each offense, to be recovered in any proper form of action in the name of the people of the state of Kansas, and paid into the state treasury. [Laws 1876, ch. 34, § 31, March 11.]

(6878) Not conclusive; powers of board. That the return of the railroads, companies or corporations shall not be held to be conclusive as to the value of said property. But the board of railroad assessors may make such assessment of such property as it may deem just and equitable. The board of railroad assessors shall have power to require the attendance of any president, secretary, receiver, accounting officer, servant, or agent of any railroad company having any portion of its railway in this state; and any such officer who shall refuse to attend before the board of assessors, when it is his duty, or he is required to do so, or refuses to submit to the inspection of said board any books or papers of such railway company in his possession, custody, or control, or shall refuse to answer such questions as shall be put to him by said board or its order, touching the business, property, money and credits, and the value thereof, of said railway company, shall be guilty of a misdemeanor, and on conviction thereof, before any court of competent jurisdiction, be fined in any sum not exceeding five hundred dollars and costs; any president, secretary, receiver, accounting officer, servant, or agent of any railway company, who shall knowingly make any false answer to any question put to him by such board, or by its order, touching the business, property, money and credits, and value thereof of said railroad company, shall be guilty of perjury, and it shall be the duty of the president of such board to prosecute any person liable to the penalties of this section, immediately upon the accruing of the liability to such prosecution. [Laws 1876, ch. 34, § 32, March 11.]

(Comm'rs of Shawnee Co. v. Equipment Co., 26 K. 363.)

LISTING AND VALUATION OF PERSONAL PROPERTY.

(6918) False statement, how corrected. The county clerk, or board of county commissioners, if he or they shall have reason to believe that any person, company or corporation has given to the assessor a false statement, or has made no statement whatever of his personal property, money, credits, investments in bonds, stocks, joint-stock companies, corporations or otherwise, and that the assessor has not returned the full amount required to be listed in his city or township, or has omitted any personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, corporations or otherwise, or has undervalued the same, which are by law subject to taxation, shall proceed at any time before the final settlement with the county treasurer to correct the returns of the assessor, and to charge such person, company or corporation on the tax roll with the proper amount of taxes; to enable him to do which, he is hereby authorized and empowered to issue compulsory process, and require the attendance of any person or persons whom he may suppose to have a knowledge of the value of such articles of personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, corporations or otherwise, and examine such person or person, on oath or affirmation, in relation to the statement or returns. And it shall be the duty of the said clerk, in all such cases, to give at least five days' notice to such person, company or corporation, by the sheriff leaving a copy of the notice with the person, if he resides in the county; and if the person does not reside in the county, then by putting a copy of said notice in the post-office, properly directed to said person, and if a company or corporation, by leaving a copy of the notice at the nearest and usual place of business of said company or corporation, before entering the said increased valuation on the tax roll, that the said person, company or corporation may have an opportunity of showing that the statement or return to the assessor was correct. And if any person who may be summoned to appear before the clerk for examination, as provided in this section, shall willfully fail to appear, or, ap-

pearing, shall refuse to answer any question or questions propounded to him concerning the subject of such examination, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court of competent jurisdiction shall be fined in a sum not exceeding fifty dollars, and by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. And the county clerk shall in all such cases file in his office a statement of the facts or evidence on which he made the correction, but he shall in no case reduce the amount returned by the assessor. [Laws 1876, ch. 34, § 70, March 11.]

(*Ritchie v. Mulvane*, 39 K. 251; *Gillett v. Treas. of Lyon Co.*, 30 K. 166; *Comm'rs of Lyon Co. v. Sergeant*, 24 K. 572; *Comm'rs of Leavenworth Co. v. Lang*, 8 K. 284; *Amrine v. K. P. Rly. Co.*, 7 K. 178.)

PAYMENT OF STATE TAXES AND MONEY TO STATE TREASURER.

(6950) Liability; holding state money. If any county treasurer shall fail to pay into the state treasury any moneys in his hands for that purpose, within the time prescribed by law, he shall in addition to other penalties be liable to the following: If he fail for the space of ten days, he shall forfeit to the state ten per cent. of the amount withheld; and if he fail for thirty days, after such specified time, he shall forfeit his office as treasurer and be deemed guilty of embezzlement, and shall be punished in the same manner as for the larceny of the amount withheld: *Provided*, That if he can show sufficient reason for such delay, he shall not be subject to any penalty. [Laws 1876, ch. 34, § 101, March 11.]

MISCELLANEOUS.

AN ACT to provide for levying and collecting delinquent state taxes and for the disposition of certain uncollected taxes, and amendatory of section three of chapter forty-three of the Session Laws of eighteen hundred and seventy-nine, and for the punishment of county commissioners who violate this act.

(7021) Certify to auditor. The county commissioners of such county shall certify to the auditor of state the amount of the proper proportion of state tax thus uncollected, and for which the county may be entitled to credit under the provisions of this act, and the auditor and treasurer of state shall credit the county with

the amounts of the same: *Provided*, That the members of any board of county commissioners who shall willfully certify to the auditor any amount for which the county is not entitled to credit shall be adjudged guilty of a misdemeanor, and upon conviction be punished by fine in double the amount thus incorrectly certified. [Laws 1885, ch. 199, § 3, March 14.]

CHAPTER 110.—TOWNSHIPS AND TOWNSHIP OFFICERS.

(7091) Road laws. The township trustee shall prosecute in the name of his township all violations of the different road laws or any provisions thereof; and in such prosecution it shall be the duty of the county attorney to act on behalf of the township. [Laws 1871, ch. 153, § 2, March 16.]

(7099a) Warrants. Any officer of any county, city, township, school district or board of education who shall sign or attest any warrant not duly authorized by the proper board or city council, and any treasurer who shall countersign any warrant not theretofore signed and attested by the proper officers as required in this act, shall be liable to the county, city, township, school district or board of education in the sum of such warrant; and any such officer who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than \$50 nor more than \$500. [Laws 1891, ch. 249, § 10.]

CONSTABLES.

(7111) Ministerial officer; deputy. All constables shall be ministerial officers in justices' courts in their respective counties, and civil and criminal process may be executed by them throughout the county, under the restrictions and provisions of the law. They may appoint one or more deputies, who may perform the same duties as their principals, and such principals shall be responsible upon their official bonds for the acts of such deputies. [G. S. 1868, ch. 110, § 38, Oct. 31.]

(7112) Authority. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels and the persons of parties as is granted by law to the sheriff or coroner, under like process issued from the courts of record. [G. S. 1868, ch. 110, § 39, Oct. 31.]

(Morrell v. Ingle, 23 K. 32.)

(7113) Serve process. It shall be the duty of every constable to serve all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable. [G. S. 1868, ch. 110, § 40, Oct. 31.]

(7114) Apprehend offenders, etc. It shall be the duty of every constable to apprehend on view of warrant, and bring to justice all felons and disturbers and violators of the criminal laws of this state; to suppress all riots, affrays and unlawful assemblies which may come to his knowledge, and generally to keep the peace in his proper county. [G. S. 1868, ch. 110, § 41, Oct. 31.]

(7115) Copy to sheriff, when. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or the jailer a certified copy of the execution, commitment or other process whereby he holds such person in custody, and return the original to the justice who issued the same, which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail until discharged by due course of law. [G. S. 1868, ch. 110, § 42, Oct. 31.]

(7116) Attend trial. Whenever any constable shall serve a warrant in a criminal case, or summons in a civil case, it shall be his duty to attend upon the trial of such case, if held within his own township, either personally or by a deputy, and execute

all orders and process made or issued by the justice therein. [G. S. 1868, ch. 110, § 43, Oct. 31.]

(7117) Call in aid. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. [G. S. 1868, ch. 110, § 44, Oct. 31.]

GENERAL PROVISIONS.

(7118) Penalty. If any person, elected to any township office, of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond, he shall be fined in a sum not exceeding one hundred dollars. [G. S. 1868, ch. 110, § 45, Oct. 31.]

(7119) Refusal to serve. If any person, elected or appointed to any township office, unless unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein, he shall be liable to a fine of twenty-five dollars; but no person, so elected, who shall have served in any township office for the term next preceding such election, shall be liable to such fine for refusing to serve, if he shall have given notice, in writing, of refusal, to the township clerk, within ten days after having been notified of his election. [G. S. 1868, ch. 110, § 46, Oct. 31.]

(7120) Refusal to deliver. Every township officer who shall, after the expiration of his term of office, neglect or refuse to deliver, on demand, to his successor in office, after such successor shall have been duly qualified according to law, all moneys, records, books, papers or other property appertaining to such office, shall be liable to a fine of not less than fifty nor more than five hundred dollars. [G. S. 1868, ch. 110, § 47, Oct. 31.]

CHAPTER 111.—TRADE-MARKS, LABELS, ETC.

(7152) Changing, destroying, etc. That if any person or persons shall willfully change, alter, deface, destroy, counterfeit, cut out or dispose of any trade-mark, brand, impression or device used by a person, company or corporation within this

state to designate a particular description of goods, wares, merchandise, cask, barrel, half-barrel, keg, bottle, package, or the contents thereof, he or they shall forfeit and pay to the owner or owners thereof for each offense not exceeding the sum of twenty-five dollars, to be recovered in any court proper to try the same, or before a justice of the peace having jurisdiction of the same. [Laws 1866, ch. 66, § 1, May 31.]

(7153) Making use of another's. If any person shall change, shift and place any brand, mark or device used or intended to be used for the purpose aforesaid to or upon any piece of goods, wares, merchandise, cask, barrel, half-barrel, keg, bottle, or package, or shall intermix, take out, change or shift any article, liquid or commodity whatever into a branded cask, barrel, half-barrel, keg, bottle, or package, and thereby avail him or themselves of another person's or persons' brand, mark, or device, he or they shall forfeit for every such offense the sum of twenty-five dollars, to be recovered as aforesaid. [Laws 1866, ch. 66, § 2, May 31.]

Trade-marks, labels, etc. Whenever any association or union of workingmen have adopted, or shall hereafter adopt, for their protection, any label, trade-mark, or form of advertisement announcing that goods to which label, trade-mark, or form of advertisement shall be attached were manufactured by a member or members of such association or union, it shall be unlawful for any person or corporation to counterfeit or imitate such label, trade-mark, or form of advertisement. Every person violating this section shall upon conviction be punished by imprisonment in the county jail for not less than three months or more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both fine and imprisonment. [Laws 1891, ch. 213, § 1.]

Every person who shall use any counterfeit or imitation of any label, trade-mark or form of advertisement of any such union or association, knowing the same to be counterfeit or imitation, shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term of not less

than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. [Laws 1891, ch. 213, § 2.]

Every person who shall use or display the genuine label, trade-mark or form of advertisement of any such association or union in any manner not authorized by such association or union shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine of not less than one hundred dollars, or both. In all cases where such association or union is not incorporated, suits under this act may be commenced and prosecuted by an officer or member of such association or union on behalf of and for the use of such association or union. [Laws 1891, ch. 213, § 5.]

Any person or persons who shall in any way use the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to so use the same, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail of not less than three months nor more than one year, or by a fine of not less than one hundred dollars nor more than two hundred dollars, or both. [Laws 1891, ch. 213, § 6.]

CHAPTER 113.—TRESPASSES.

(7157) Liability and punishment. If any person shall cut down, injure or destroy, or carry away any tree, placed or growing for use, shade or ornament; or any timber, rails or wood, standing, being or growing on the land of any other person; or shall dig up, quarry or carry away any stones, ore or mineral, gravel, clay or mould, roots, fruits or plants; or cut down or carry away grass, grain, corn, flax or hemp in which he has no interest or right, standing, lying or being on land not his own; or shall knowingly break the glass or any part of it, in any building not his own, the party so offending shall pay to the party injured treble the value of the thing so injured,

broken, destroyed, or carried away, with costs, and shall be deemed guilty of a misdemeanor, and shall be subject to a fine not exceeding five hundred dollars. [G. S. 1868, ch. 113, § 1, Oct. 31.]

(*State v. Armell*, 8 K. 288; *State v. Blakesley*, 39 K. 152; *Arn v. Mathews*, 39 K. 272; *Schippel v. Norton*, 38 K. 567; *Westbrook v. Mize*, 35 K. 299; *Cohen v. St. L. Ft. S. & W. Rld. Co.*, 34 K. 158; *Haag v. Cooley*, 33 K. 390; *McGonigle v. Atchison*, 33 K. 726; *Sullivan v. Davis*, 29 K. 28; *Wagstaff v. Schippel*, 27 K. 450; *Freeman v. McLennan*, 26 K. 151; *Felter v. Manville*, 23 K. 191.)

(7158) Throwing down doors, bars, etc. If any person shall voluntarily throw down or open any doors, bars, gates or fences, and leave the same open or down, other than those that lead into his own inclosure, he shall pay to the party injured the sum of five dollars, and double the amount of damages the party shall sustain by reason of such doors, bars, gates and fences having been thrown down or opened, with costs, and shall be deemed guilty of a misdemeanor, and shall be subject to a fine not exceeding one hundred dollars. [G. S. 1868, ch. 113, § 2, Oct. 31.]

(*Manville v. Felter*, 19 K. 253; *State v. Sullivan*, 14 K. 170.)

CHAPTER 116.—WEIGHTS AND MEASURES.

(7197) Penalty for neglect, etc. Every county clerk who neglects to have the standards under his charge compared and sealed as required by this act, or neglects to keep the same in good order and repair, or who suffers any of them, through his neglect, to be lost, damaged, or destroyed, shall forfeit to the county not less than fifty dollars nor more than two hundred dollars, to be recovered before any justice of the peace of the county. [Laws 1877, ch. 208, § 7, March 10.]

(7198) Penalty. Whoever sells by any other weights, scales, measures, beams or balances than such as conform to such standards, shall forfeit a sum not exceeding twenty dollars for each offense; and when by the custom of trade they are provided by the buyer, if he purchases by any other weights, measures, scales, beams or balances, he shall be subject to a like

penalty, to be recovered before a justice of the peace in the name and for the use of the person complaining. [Laws 1877, ch. 208, § 8, March 10.]

(7202) Penalty. Whoever, in buying any of the articles mentioned in the preceding section [7201], shall take any greater number of pounds thereof to the bushel, or in selling any of said articles shall give any less number of pounds thereof to the bushel, than is allowed by said section, with intent to gain advantage thereby, except where expressly authorized so to do by special contract or agreement to that effect, shall be liable to the party injured in double the amount of the property so wrongfully taken or not given, and ten dollars in addition thereto, to be recovered in any court of competent jurisdiction. [Laws 1877, ch. 208, § 12, March 10.]

AN ACT to regulate the sale and to fix the weights and measures of certain oils.

(7204) Penalty. Whoever, in buying any of the articles mentioned in the preceding section [7203], shall take any greater number of pounds thereof to the gallon, or in selling any of said articles, shall give any less number of pounds thereof to the gallon, than is allowed by said section, with intent to gain advantage thereby, except when expressly authorized so to do by special contract or agreement to that effect, shall be liable to the party injured in double the amount or value of the property so wrongfully taken or not given, and ten dollars in addition thereto, to be recovered in any court of competent jurisdiction. [Laws 1885, ch. 206, § 2, March 14.]

CHAPTER 118.—WOODS, MARSHES, AND PRAIRIES.

(7276) Willfully setting on fire. If any person shall wantonly and willfully set on fire any woods, marshes, or prairies, so as thereby to occasion any damage to any other person, he shall upon conviction be punished by fine not exceeding five hundred dollars and not less than fifty dollars, or by imprisonment in the county jail not more than six months and not less than ten days, or by both such fine and imprisonment. [G. S. 1868, ch. 118, § 1, Oct. 31.]

APPENDIX.

CRIMINAL FORMS.

BY G. C. CLEMENS,

OF THE TOPEKA BAR.

EXPLANATIONS AND SUGGESTIONS.

THE Kansas lawyer has already upon his shelves the works of Archbold, Wharton, or Bishop. He turns to these for information concerning the *general* principles of criminal law and the *general* forms of criminal law pleading and procedure, and will not consult the present compilation on questions of a general character. But the Kansas code of criminal procedure has some *peculiar* provisions, and in the legislation of Kansas are to be found statutory crimes, either peculiar to Kansas legislation or so recent everywhere that the courts have not spoken concerning their construction; and, although these peculiar provisions and peculiar crimes demand the intelligent action of the Kansas lawyer, the *general* treatises give him no information or guidance concerning them; meantime work presses and he has little opportunity for meditation before he must proceed to act. It is in such cases he will turn to this compilation for needed light.

It is upon such subjects—on local peculiarities—that the Kansas lawyer has a right to expect a collection of Kansas criminal law forms to afford him assistance; he does not yearn for a repetition of the forms which have been used in books from Chitty's time, and which are not only hoary with antiquity but more wearisomely verbose than the speeches of proverbially garrulous old age.

I have acted upon this idea; and have endeavored to provide such forms as will be beneficial to the *Kansas* practitioner, for whose special use this work is intended, instead of "padding" with a collection of old, ready-made forms, for which local practitioners care nothing whatever, and which utterly set at naught the aims of brevity and simplicity which the authors of our code

had in view. This understood, let me call attention, once for all, in connection with these forms, to some matters which at first glance are likely to attract the observation of even lawyers familiar with our criminal code—matters to this day constantly overlooked.

Our code is emphatic that “the forms of pleadings in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein described.” (§ 101.) In a very early case, Chief Justice Kingman, referring to this section and kindred provisions, said :

“Pleading, under the criminal code of this state, is a system furnishing its own rules for the determination of the sufficiency of any of the pleadings recognized by it. The legislature evidently designed by the code of criminal procedure to simplify pleadings so that the technicalities which had become so interwoven with the old system should no longer be used to defeat the ends of justice. . . . It is to be regretted that those who have occasion to plead under the code so often attempt to unite the simple rules of the code with the complex and cumbersome forms of the common law. Either may be good enough of itself, but, from their very nature, both ought not to be attempted in one case; it is from the vain effort to do so that most of the difficulty arises in determining upon the sufficiency of the pleadings. The nice technicalities and fine-spun and often arbitrary distinctions of the old system will not harmonize with the ‘plain and concise language’ which the court requires in stating the facts constituting an offense.” (*Madden v. The State*, 1 Kas. 340, 348.)

Another section provides that “the words used in the indictment or information must be construed in their usual acceptance in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.” (§ 107.) Another section declares that “words used in the statutes to define a public offense need not be strictly pursued, but other words, conveying the same meaning, may be used.” (§ 108.) And still another section requires that “the indictment or information must contain . . . a statement of the facts constituting the offense, *in plain and concise language*, without

repetition." (§ 103.) Other sections still farther liberalize procedure; and he must be blind who cannot see that "the common-law rules of construing criminal pleadings have been set aside by our code of criminal procedure," and that "to that code must we look for the rules to determine the sufficiency of an information or indictment." (*State v. White*, 14 Kas. 538.)

In the case just cited the court conceded that the authorities declared invalid the information there sustained; and in *State v. Potter*, 15 Kas. 311, the action of the court below in "disregarding authorities under the old practice" and sustaining an indictment which those authorities declared bad, was approved. Over and over has the supreme court called attention to the changes wrought by the new system of procedure; and over and over has that court manifested its determination to act in the spirit of the code's authors.

"Our criminal code," quotes Chief Justice Horton, "has wisely discarded in pleading many of the old forms of expression and technical requirements which only served to unlock the doors of prisons and allow the guilty to go free." (*State v. Harp*, 31 Kas. 500.)

In this collection of forms I have kept constantly in mind the spirit of the code by which their sufficiency is to be determined; and hence I have sought to avoid vain repetitions, the retention of phrases expressly discarded, and also ancient allegations which even the ancient authorities were unanimous need never be proved. What business in a pleading has any allegation of which no proof is required? Some of these matters I shall mention more specifically; but as to much contained in every information filed, see what the code itself declares.

As to repetition, "no indictment or information may be quashed or set aside . . . for the want of an allegation of the time or place of any material fact, *when the venue and time have once been stated*," (§ 110;) yet informations abound in repetitions of "then and there," or "on the said — day of —," or "at the said county of —," etc. No indictment or information is to be held bad for omitting the phrases, "with force and arms,"

"contrary to the form of the statute," or "against the peace and dignity of the State of Kansas," (*id.*;) yet these latter phrases terminate every information I have ever seen in a Kansas court.

No indictment need allege "that the grand jurors were impaneled, sworn, or charged," (*id.*;) but who has ever seen one without such an allegation? In short—

"The practice in this State is governed by a code of criminal procedure, and in many respects varies largely from that which obtained at the common law. Under our code, the information must contain the title of the action, specifying the name of the court to which the information is presented, the names of the parties, and a statement of the facts constituting the offense in plain and concise language, without repetition. It must be direct and certain as regards *the party* and *the offense* charged, but the *precise time* of the commission of an offense need not be stated therein. It is sufficient if shown to be within the statute of limitations, except where the time is an indispensable ingredient in the offense.

"The information is sufficient, if it appear therefrom that it was presented by the prosecuting attorney of the county in which the court is held;

"That the defendant is named therein, or described as a person whose name is unknown to the prosecuting attorney;

"That the offense was committed within the jurisdiction of the court, or is triable there;

"That the offense is clearly set forth in clear and concise language, without repetition, with such a degree of certainty that the court may pronounce judgment, upon conviction, according to the rights of the case." (*State v. Cooper*, 31 Kas. 507.)

And in no event may an information or an indictment be quashed or set aside "for *any* defect or imperfection which does not tend to the prejudice of the *substantial* rights of the defendant *upon the merits*." (§110.)

Thus instructed as to the change wrought by our code, and remembering that the former system of pleading came to us from England, observe the similarity between that code and the act of 7 George IV, which enacted that "no judgment upon any indictment or information for any felony or misdemeanor . . . shall be stayed or reversed for . . . the omission

of the words 'as appears by the record,' or of the words 'with force and arms,' or of the words 'against the peace,' nor for the insertion of the words 'against the form of the statute,' instead of the words 'against the form of the statutes,' or *vice versa*; . . . nor for omitting to state the time at which the offense was committed, in any case where the time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offense," etc. (Archbold's Criminal Pleading, ch. 3, § 4.)

That statute also relieved the pleader from the labor of making "any averment of any matter unnecessary to be proved," (*id.*,) and it must be supposed that our code does likewise by requiring only a concise statement of the facts constituting the offense, as well as by the general spirit pervading its provisions.

Was it the former practice to allege what needed not to be proved? It not only was, but, despite the statute cited and the code, it is the practice to aver what it would be irrelevant to prove.

For instance, in an indictment for murder, with what care does even the Kansas pleader describe the weapon used! If a pistol "commonly called a revolver" was used, with what care it is explained that the thing was not only loaded, but—loaded with *powder* and bullets!—with *lead*en bullets! Then the wound—how accurately it is described, not only as to the portion of the body where it was located, but on which side! Nor is that all, but the size of the wound is given, as—"one mortal wound of the breadth of three inches and of the depth of six inches." And is it not unusual, in informations, however it may be in the vulgar world, for a man to die as soon as he is killed? The victim, we are told, "of said mortal wound did *languish*, and *languishing* did die"! We are, as a rule, instructed whether it was in his right or left hand, or in both of them at once, that the assailant "then and there had and held"; and sometimes, even yet, we are told what the weapon was

worth, as—"with a certain pistol, commonly called a revolver, of the value of two dollars," etc.

Now, look at any work on evidence in criminal cases and see that it is not necessary to prove that the weapon was what the information says it was; but it need only be proved that it was a weapon calculated to *produce death by the means alleged*—by stabbing, by shooting, or by blows; though the information may say the weapon was held in the right hand and the proof shows it was held in the left, the discrepancy is utterly immaterial; nor, perhaps, would an acquittal be directed, even if it were proved the assailant held the pistol with his toes or his teeth; and in ordinary description nothing would be said of holding the weapon at all, but it would be said, "A *shot* B with a pistol," or "A *stabbed* B with a knife." Though the information allege the wound to be on the right side, it will make no difference if the proof shows it was on the left. Even were the wound *proved* to be on another part of the body altogether than that *alleged*, it would be of no consequence. And why allege a period of "languishing" before death from the wound? Only this: that unless death ensued within a year and a day after the infliction of the wound, the law presumed that death resulted from some other cause, and the accused was not guilty of murder.

A single averment that the deceased "then and there died" sufficiently shows all the law requires. It never was necessary to state the value of the weapon; how could it have been? Is death less death if produced by a gorgeous hilted stiletto than if by a common cheap knife or even a car link? The sole excuse for this nonsense was that the weapon was forfeited to the king, and, presumably, the pleader got a percentage of the forfeiture.

I deemed these extended explanations necessary; for books of forms already so abound, though collections of forms prepared in the spirit of the code do not, that it would be superfluous to do this work at all unless I proposed to supply a deficiency by the preparation of forms which should be fair guides to ar-

tistic pleadings under the new system of procedure. But so few lawyers ever make a *systematic study* of criminal-law pleading, so as to be thoroughly possessed of *its principles*—apart from set forms—that I was satisfied many would at first be startled at the simplicity of the forms here presented, and, without such explanations as I have given, might reject them entirely as unsafe, notwithstanding all the courts have said in favor of simplicity. Indeed, I have sometimes refrained from making forms as simple and as concise as they probably should be, lest I should make timid counsel uneasy. I know from experience with what hesitation and misgivings the old ways of the profession are given up; but this hesitation and anxiety is born of uncertain knowledge, and in these days of radical and rapid change, adherence to the old after it has become absurd is likely to make members of a supposedly learned profession appear ridiculous. Simplicity of pleading has been adopted by legislation and encouraged by judicial encomium for a quarter of a century in Kansas: is it not time the change should begin at last to appear in the actual work of the bar?

The forms here presented are beyond doubt sufficient, and sufficient not only to withstand motions to quash, but sufficient in the more honorable respect of giving the accused plain information of the nature of the charge made against him. I have not attempted to give a form for every possible case, but I have rather sought to give sample forms for *classes* of cases, leaving the pleader to individualize the charges as occasions arise. In short, instead of essaying the impossible task of furnishing a ready-made information for every offense which can ever be committed in any manner, I have aimed to give such guidance that the pleader may prepare his own informations to exactly fit the cases on which he may be engaged. And if those who consult this work shall learn by its aid *to do without forms*, my purpose will have been accomplished.

G. C. CLEMENS.

FORMS.

PROSECUTIONS BY INDICTMENT.

ORDER FOR GRAND JURY.

STATE OF KANSAS, ——— COUNTY, ss.

The State of Kansas, to ———, County Clerk of ——— County, in the State of Kansas, greeting:

WHEREAS, There has been duly presented to me, the judge of the district court of ——— county, in the State of Kansas, a proper petition signed by one hundred of the taxpayers of said county, praying that a grand jury may be drawn and summoned to attend the sitting of the term of said district court to commence on the — day of —, A. D. 18—: it is, therefore,

Ordered, That you, the county clerk of said county, do proceed as provided by law to draw a grand jury, and cause the same to be notified to attend the sitting of said court on the first day of the said term.

Witness my hand, this — day of —, A. D. 18—.

—————, *Judge of the District Court*
of ——— County, Kansas.

NOTICE OF DRAWING.

STATE OF KANSAS, ——— COUNTY, ss.

To ———, Sheriff, and ——— and ———, Justices of the Peace, of ——— County, Kansas, greeting:

You are hereby notified that, in pursuance of an order of the judge of said court, a grand jury to attend the sitting of the next term of the district court of ——— county, Kansas, will be drawn at my office on the — day of —, A. D. 18—, at — o'clock, — M.; which drawing you are hereby required to attend.

Witness my hand and official seal, this — day of —, A. D. 18—.

—————,
County Clerk of ——— County, Kansas.

GRAND JURY LIST FOR SHERIFF.

We hereby certify, that at a drawing therefor, held on the — day of —, A. D. 18— at — o'clock — M., at the office of the county clerk of ——— county, in the state of Kansas, in pursuance of an order of the judge of the district court of said county, the following-named persons were duly drawn as a grand jury to attend the sitting of the term of said court commencing on the — day of —, A. D. 18—, and to be in attendance on the first day thereof:

NAMES.	PLACES OF RESIDENCE.
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Witness our hands and the seal of said county clerk, this — day of —, A. D. 18—.

—————, *County Clerk.*
—————, *Sheriff.*
—————, } *Justices of the Peace.*

NOTICE TO GRAND JURORS.

STATE OF KANSAS, — COUNTY, ss.

The State of Kansas, to ———:

You are hereby commanded to be and appear before the district court of — county, in the state of Kansas, on the — day of —, A. D. 18—, then and there to serve as a grand juror of said court at the term then commencing, you having been duly drawn as such grand juror in pursuance of an order of the judge of said court.

Witness my hand, this — day of —, A. D. 18—.

Sheriff of — County, Kansas.

ORDER CHANGING VENUE.

This action coming on to be heard on the petition of said defendant for an order removing this action to the district court of some other county in this judicial district, [or, of some county in some other judicial district,] and due notice of said application having been given to the county attorney of this county, the same was heard upon said petition and the affidavits filed and read in support thereof, [and counter affidavits filed and read by the county attorney,] and was argued by counsel; on consideration whereof, the court finds that it is true, as in said petition alleged, that the minds of the inhabitants of this county [or, of the entire — judicial district] are so prejudiced against the said defendant that a fair trial cannot be had therein; and it is, therefore,

Ordered, That this action be and it is hereby removed from this court to the district court of — county, in the state of Kansas, for trial, for the cause that the minds of the inhabitants of this county [or, that the inhabitants of the entire — judicial district] are so prejudiced against the defendant that a fair trial of this action cannot be had therein; and it is further [*if the defendant is on bail*]

Ordered, That the said defendant enter into a recognizance with sufficient sureties for his appearance in the said district court of — county, in the state of Kansas, at the next term thereof, to answer the said charge pending against him in this action, and not to depart said court without leave; and until the giving of said recognizance the said removal shall not be affected hereby; [or, *if the defendant is in custody, then, in lieu of the above,*]

Ordered, That the sheriff of this county be, and he is hereby, commanded to remove the body of the said defendant from this county to the jail of said — county, and there deliver him to the keeper of said jail, together with the warrant [or process] by virtue of which said defendant is held [or imprisoned].

INDICTMENT.

IN THE DISTRICT COURT OF — COUNTY, IN THE STATE OF KANSAS.

THE STATE OF KANSAS, *Plaintiff*,
v.
———, *Defendant*.

The grand jurors of — county, in the state of Kansas, upon their oaths present: That, etc.

INFORMATION.

IN THE DISTRICT COURT OF — COUNTY, IN THE STATE OF KANSAS.

THE STATE OF KANSAS, *Plaintiff*,
v.
———, *Defendant*.

———, county attorney of — county, in the state of Kansas, gives the court to understand and be informed: That, etc.

OFFENSES AGAINST THE PERSON.

FOR MURDER IN FIRST DEGREE—BY SHOOTING.

That on the — day of —, A. D. 18—, at the county of —, in the state of Kansas, — did then and there unlawfully, feloniously, willfully, deliberately and premeditatedly kill and murder one —, then and there being, by shooting him, the said —, with a certain pistol, commonly called a revolver, then and there loaded with powder and leaden bullets, which said pistol, so as aforesaid loaded *with powder and leaden bullets*, he, the said —, then and there in his hands had and held.*

ANOTHER FOR THE SAME. (A SUGGESTION.)

That on the — day of —, A. D. 18—, at the county of —, in the state of Kansas, — did one —, then and there being, unlawfully, feloniously, willfully, deliberately and premeditatedly kill and murder, by shooting him with a revolver.†

MURDER IN FIRST DEGREE—BY POISONING.

That on the — day of —, A. D. 18—, at the county of —, in the state of Kansas, — did willfully, feloniously, and of his malice aforethought, administer to and cause to be taken by one —, into his stomach, a deadly quantity of a certain deadly poison called —, he, the said —, then and there well knowing the same to be, in quantity and kind as so administered and taken, a deadly poison; by means of the taking of which deadly poison, he, the said —, then and there became mortally sick; and of the said mortal sickness, then and there died; and so the said — did, in manner and form aforesaid, willfully, feloniously, and of his malice aforethought, him, the said —, then and there kill and murder.

KIDNAPPING. (§ 2166.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, without any lawful authority whatsoever, did forcibly and feloniously assault, seize and confine one —, with the felonious intent to cause him, the said —, against his will, to be taken [*or, sent*] out of the State of Kansas.

THE SAME.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one — did feloniously inveigle, decoy and kidnap one —, with the felonious intent to cause him, the said —, against his will, to be taken out of the State of Kansas.

THE SAME.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, without any lawful authority whatsoever, did forcibly and feloniously seize and capture [*or, did feloniously inveigle, decoy and kidnap*] one —, with the felonious intent to cause him, the said —, to be then and there against his will secretly held and confined [*or, held, only.*]

* Held good in *State v. McGaffin*, 36 K. 315, 316. The words in italics could well be spared from even this brief form, and some repetition also be avoided. See next form.

† That it is not necessary to allege the accused held the weapon in his hand, etc., see *Commonwealth v. Castley*, 118 Mass. 1-21.

ROBBERY, FIRST DEGREE—BY PERSONAL VIOLENCE.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, by an unlawful, felonious and violent assault upon the person of —, did then and there, from the person [or, in the presence] and against the will of him, the said —, one gold watch of the value of twenty-five dollars, of the property of him, the said —, unlawfully, feloniously and violently steal, take and carry away.

ROBBERY, FIRST DEGREE—BY PUTTING IN FEAR.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, by making upon — a felonious, violent and threatening assault with a revolver, did then and there put him, the said —, in fear of immediate danger of his life, and then and there and thereby from the person [or, in the presence] and against the will of him, the said —, five silver dollars* of the value of five dollars, of the current coin of the United States and of the moneys and property of him, the said —, did feloniously and violently steal, take and carry away.

ROBBERY, IN THIRD DEGREE.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, by a certain written communication by him sent to — threatening to accuse him, the said —, of the crime of rape upon one —, [set out briefly the crime,] which said written communication was as follows, to wit, [set out the communication,] which said written communication was, by him, the said —, so sent with the felonious view and intent then and there and thereby to extort money from the said —, did then and there and thereby, intimidate the said — with the said threat, and from him did then and there and thereby the sum of fifty dollars, lawful money of the United States, belonging to the said —, feloniously extort, receive and gain.

OFFENSES AGAINST PROPERTY.

ARSON, FIRST DEGREE. (§ 2176.)

That on the — day of —, A.D. 18—, at the county of —, in the State of Kansas, —, in the night-time of said day, did feloniously, willfully and maliciously set fire to and burn the dwelling-house of one —, there situate, in which dwelling-house there was then, at the time of said setting fire to and burning, a human being, [or, human beings,] to wit, one —.

SECOND DEGREE—DAYTIME. (§ 2178.)

That on the — day of —, A.D. 18—, at the county of —, in the State of Kansas, in the daytime of said day, — did feloniously, willfully and maliciously set fire to and burn the dwelling-house of one —, there situate, which said dwelling-house was then inhabited, and in which then, at the time of said setting fire to and burning, was a human being, [or, human beings,] to wit, —.

BURGLARY, FIRST DEGREE. (§ 2188, 1ST CLAUSE.)

That on the — day of —, A. D. 18—, at about the hour of — o'clock in the night-time of the said day, —, with intent then and there to felon-

* See *State v. Segermond*, 40 K. 107.

ously and burglariously steal, take and carry away the goods and chattels of the said —, then and there being in said dwelling-house, did, at the county of —, in the State of Kansas, feloniously break and enter the dwelling-house of one —, there situate, by forcibly bursting and breaking the outer door of said house, in which said dwelling-house there was then, at the time of the said breaking and entering, a certain human being, [or, were certain human beings,] to wit, one —,

(Larceny may be charged in the same count by counting thus :)

and then and there did feloniously and burglariously steal, take and carry away —, of the value of —, of the goods and chattels of the said —, then and there in the said dwelling-house being found.

BURGLARY, FIRST DEGREE. (§ 2188, 2ND CLAUSE.)

That on the — day of —, A. D. 18—, at about the hour of — o'clock in the night-time of the said day, —, with intent then and there to feloniously and burglariously steal, take and carry away the goods and chattels of the said —, then and there being in said dwelling-house, and he, the said —, being then and there armed with a certain dangerous weapon, to wit, a —, did, at the county of —, in the State of Kansas, feloniously break and enter the dwelling-house of one —, there situate, in which dwelling-house then, at the time of said breaking and entering, there was a certain human being, [or, were certain human beings,] to wit, one —.

(Larceny may be added in same count. See preceding form.)

BURGLARY, FIRST DEGREE. (§ 2188, 3RD CLAUSE.)

That on the — day of —, A. D. 18—, at about the hour of — o'clock in the night-time of said day, —, with intent then and there to feloniously and burglariously steal, take and carry away the goods and chattels of the said —, then and there being in said dwelling-house, did, at the county of —, in the State of Kansas, feloniously break and enter the dwelling-house of one —, there situate, by unlocking the outer door of the said house by means of false keys; there being in said dwelling-house then, at the time of said breaking and entering, a certain human being, [or, certain human beings,] to wit, one —.

BURGLARY, SECOND DEGREE. (§ 2189.)

That on the — day of —, A. D. 18—, at about the hour of — o'clock in the daytime of the said day, —, with intent then and there to feloniously and burglariously steal, take and carry away the goods and chattels of the said —, then and there being in said dwelling-house, etc.

(The indictment should be the same as in other cases in all respects, save the allegation that the offense was committed "in the daytime" instead of "in the night-time.")

GRAND LARCENY. (§ 2207.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, — did feloniously steal, take and carry away one gold watch of the value of fifty dollars, and one gold watch-chain of the value of twenty-five dollars, of the goods and chattels of one —.

GRAND LARCENY OF ANIMAL. (§ 2207.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, — did feloniously steal, take and carry away one bay mare, [give marks, etc., if any,] of the property of —.

EMBEZZLEMENT. (§ 2230.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, who was then and there the clerk of —, and not within the age of sixteen years, did unlawfully, fraudulently, feloniously and without the assent of his said employer, the said —, embezzle and convert to his own use a *certain sum of money* * belonging to his said employer, to wit, the sum of — dollars, which had come into the possession and under the control of the said — by virtue of his said employment as such clerk.

SAME.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, being then and there within the age of sixteen years, and employed as clerk by —, did unlawfully, fraudulently and feloniously, and without the assent of the said —, his said employer, embezzle and convert to his own use a certain sum of money, to wit, the sum of — dollars, lawful money of the United States which had come into his possession and under his control by virtue of his said employer, and then and there belonging to his said employer, the said —.

That on the — day of —, A. D. 18—, in the county of —, in the State of Kansas, —, being then and there in the employ of —, as a clerk, and then and there within the age of sixteen years, did unlawfully, feloniously, willfully, and without the assent of his said employer, embezzle and convert to his own use a large amount of money, to wit, the aggregate sum of — dollars, belonging to his said employer, and which had come into his possession and under his care by virtue of his said employment.

AGAINST OFFICER OF INSOLVENT BANK FOR RECEIVING DEPOSIT.

That on the — day of —, A. D. 18—, at the county of —, in the state of Kansas, —, being then and there the — [*naming his office, as president, cashier, etc.*] of a banking institution incorporated under the laws of the state of Kansas, to wit, the —, then and there doing business at such banking institution, and which was then and there insolvent [*or, in failing circumstances*], did, though well knowing and having had knowledge that said banking institution was so insolvent [*or, in failing circumstances*], unlawfully and feloniously receive into the said banking institution of and from one —, a certain deposit of money, of the aggregate amount and value of — dollars, of the money of him, the said —; and thereafter, to wit, on the — day of —, A. D. 18—, the said banking institution, by reason of its said insolvency [*or, failing circumstances*] did then and there, without having restored or repaid the said deposit, utterly fail and wholly cease to do business, and became and remains wholly unable to pay said deposit on demand in the course of banking business. Whereby, by reason of the said deposit, so as aforesaid unlawfully and feloniously received, loss to the extent of the said sum of — dollars did to the said — occur.

FALSE PRETENSES. (§ 2228.)

That on the — day of —, A. D. 18—, at the county of — in the State of Kansas, —, with intent to cheat and defraud one —, did unlawfully and designedly falsely pretend and represent to the said — that [*state the pretenses*], and then and there and by means of the said false pretenses, the said —, then and there believing the same and being deceived thereby, did obtain of and from the said — [*state what he obtained*] of the value of —

* See *State v. Smith*, 13 K. 274, 2nd clause of syllabus.

dollars of the moneys [*or, goods and chattels*] of him, the said —; whereas, in truth and in fact, the said pretenses and representations so made by the said — were utterly false, and [*negative each pretense*] as he, the said —, then and there well knew.

PUTTING TO USE FRAUDULENT CONVEYANCE. (§ 2232.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, being the grantor in a certain deed, [*or, bill of sale,*] in writing, bearing date the — day of —, A. D. 18—, and purporting to convey to one —, for the stated consideration of — dollars, the fee-simple title, which at the date of said deed was held and owned by him, the said —, on and to certain lands situated in the county of —, in the State of Kansas, described in said deed, to wit, [*here describe the land or other property,*] which deed, [*or, bill of sale, or, mortgage, or, other instrument,*] he, the said —, had in fact so made without any consideration whatever, and for the purpose and with the intent of hindering, delaying and defrauding his creditors, he at the execution and delivery of said deed, [*or, bill of sale,*] having been wholly insolvent and indebted largely beyond his means of paying, did then and there unlawfully and willfully put the said deed in use, by [*state how.*]

EXECUTING SECOND CONVEYANCE WITHOUT RECITING A PREVIOUS ONE. (§ 2233.)

That at the county of —, in the State of Kansas, —, having previously, to wit, on the — day of —, A. D. 18—, for a valuable consideration executed and delivered to one —, a contract in writing whereby he, the said —, bound himself, upon the performance by the said — of certain terms and conditions therein contained, to convey to the said —, by proper deed of conveyance, the fee-simple title in and to certain lands and tenements situated in the county of —, in the State of Kansas, described in said contract, to wit, [*here describe the lands,*] which said contract still remained outstanding and in full force and effect, did on the — day of —, A. D. 18—, and for a valuable consideration, unlawfully and willfully execute and deliver to one —, who was then and there in ignorance of the said contract to convey the certain deed in writing of him, the said —, and thereby conveyed to him, the said —, the fee-simple title in and to the said lands and tenements without reciting or describing in said deed the said previous contract nor the substance thereof, with the intent then and there and thereby to defraud him, the said —, the holder of the said former contract.

FRAUDULENTLY DISPOSING OF MORTGAGED PROPERTY. (§ 2452.)

That at the county of —, in the State of Kansas, —, having previously, to wit, on the — day of —, A. D. 18—, executed and delivered to one —, a chattel mortgage of that date upon certain personal property, being the property of him, the said —,* to wit, [*describe the property; if offense be as to only part of the property, then say, after *, "including the following," &c.,*] to secure to the said — the certain promissory note, [*or whatever the debt or thing they secured,*] of him, the said —, of even date with said mortgage, for the sum of — dollars, payable — after the date thereof, which said note remained unpaid and said mortgage continued in full force and effect, did, on the — day of —, A. D. 18—, for the purpose of defrauding him, the said —, unlawfully sell the said property so included in said mortgage to one —.

FRAUDULENTLY CONCEALING MORTGAGED CHATTELS. (§ 2452.)

That at the county of —, in the State of Kansas, on the — day of —, A. D. 18—, —, with the intent and for the purpose of defrauding one —,

did, on the — day of —, A. D. 18—, unlawfully conceal from him, the said —, certain personal property, to wit, [*describe the property as to which the offense was committed.*] upon which, on the — day of —, A. D. 18—, he, the said —, had, for a valuable consideration, executed and delivered his certain chattel mortgage of said last-named date to the said —, to secure to the said — the payment by said — of his certain promissory note of the same date for the sum of — dollars, payable to said —, — days after said date, the said note and mortgage then and there remaining unsatisfied and in full force and effect.

TRESPASS—TREES, ETC. (§ 7157.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one — did unlawfully and willfully cut down [*or, cut down and carry away, or, carry away only, according to the fact*] a certain — tree theretofore placed, and then and there growing for —, and standing and being on certain land, to wit, [*describe land,*] which was not then and there the land of him, the said —, but was then and there the land of one —, he, the said —, having then and there no interest in nor right to the said tree.

CUTTING AND CARRYING AWAY GRASS. (§ 7157.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one — did unlawfully and willfully cut down and carry away [*give quantity if practicable*] of grass in which he had then and there no interest nor right, then and there standing and being on certain land not his own, but being then and there the land of one —, to wit: [*describe land.*]

HUNTING WITHOUT LAND-OWNER'S PERMISSION. (§ 2440.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, did unlawfully and willfully, with a gun and dog [*or otherwise*] hunt game upon certain grounds [*or, lands*] of one —, which were then and there inclosed grounds, [*or, lands,*] without having obtained leave of him, the said —, so to do.

OFFENSES AFFECTING THE ADMINISTRATION OF JUSTICE.

PERJURY ON A TRIAL.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, on the trial then and there being held before the district court of said county of a certain civil action in which — was plaintiff and — was defendant, pending in said court, which was then and there competent to entertain and determine the same, it then and there became and was a material question, whether, &c.; [*set out the point which the evidence tended to prove;*] one — then and there appeared as a witness on behalf of the said —, the defendant in said action, and having been then and there duly sworn by and before —, then and there the clerk of the said district court, who had then and there competent authority to administer said oath, to testify as a witness on said trial, did then and there unlawfully, feloniously, knowingly, willfully and corruptly on his said oath falsely testify [*among other things*] in substance and to the effect that, [*set out the false testimony.*] Whereas, in truth, [*negative the false testimony.*]

(See *Liquor Law Forms.*)

REFUSING TO RECEIVE PRISONER IN JAIL. (§ 2326.)

That at the county of —, in the State of Kansas, one —, upon complaint duly made to and instituted before one —, then and there a justice of the peace in and for the township [*or, city*] of —, in the said county and State, that — had, at said county and State, been theretofore lately feloniously killed and murdered, by him, —; and the warrant of said justice of the peace duly issued and served, and upon the duly ordered continuance and adjournment of the examination of said —, to the — day of —, A. D. 18—, at — o'clock — m., before said justice of the peace, having been by said justice, on the — day of —, A. D. 18—, at his office in said township, county and State, ordered to be committed to the county jail of the said county of — in the State of Kansas, pending said adjournment; and —, then and there a constable of said county, having in his possession and custody the body of the said —, and having then and there the written order issued by the said justice of the peace stating the proceedings aforesaid and the said order of commitment, having duly presented to —, then and there the keeper of the said county jail of said county and State, and at the said jail on the said — day of —, A. D. 18—, the said written order of said justice of the peace and the body of the said —, and demanded of the said keeper of said jail that he receive into his custody and safely keep in said jail the said —; he, the said —, then and there as aforesaid the keeper of said jail, did unlawfully and willfully refuse to receive the said — into the said jail.

OFFENSES AFFECTING PUBLIC TRUSTS.

COUNTY COMMISSIONER ALLOWING CLAIM AT SPECIAL OR ADJOURNED MEETING. (§§ 1659, 1661.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, being then and there a duly elected and qualified county commissioner of the county of —, in the State of Kansas, for the — commissioner district of said county, and acting as such county commissioner, did, while then and there acting with the other county commissioners of said county as the board of county commissioners of said county, in session, not at a regular meeting of said board but at a special [*or, an adjourned*] meeting thereof, then and there being held unlawfully and willfully, vote to allow against the said county of —, and to order to be paid from the treasury of said county, a certain claim against said county, then and there presented by and on behalf of one —, for the sum of — dollars and — cents, not being for election expenses nor for jury fees, but for [*state nature of claim*], whereby, by means of said unlawful vote, the said claim was then and there unlawfully allowed by said board of county commissioners as a claim against said county and ordered to be paid as such.

OFFICER SPECULATING IN CERTIFICATES. (§ 2462.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, being then and there the — of the — of —, in the State of Kansas, of and from one —, then and there holding and owning the same, a certain warrant in writing by authority of —, drawn by the — of —, on the treasurer of said —, dated the — day of —, A. D. 18—, and directing said treasurer to pay to the order of one — the sum of — dollars and — cents; which warrant was in the words and figures following, to wit, [*give copy of warrant*], did unlawfully and corruptly purchase for a sum less than the full par value expressed on the face thereof, to wit, for

the sum of — dollars and — cents; the said warrant not being, in whole nor in part, necessarily required nor so purchased to be used for the payment of the individual taxes of him, the said —, but then and there as aforesaid, purchased solely for purposes of traffic.

SIGNING NAME TO PETITION, ETC., WITHOUT AUTHORITY.
(§ 2473.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, to a certain — in writing addressed to the —, and then and there intended, as he, the said —, then and there well knew, for presentation to the said —, and which was in the words and figures following, to wit, [*give exact copy of the document,*] did unlawfully sign the name of one —, without having the authority of the said — so to do.

SIGNING FICTITIOUS NAME TO PETITION, ETC. (§ 2473.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, to a certain — in writing addressed to the —, and then and there intended, as he, the said —, then and there well knew, for presentation to the said —, and which was in the words and figures following, to wit, [*give exact copy of the document,*] did unlawfully sign the name — as that of a person in being, when in truth and in fact, as he, the said —, then and there well knew, there was no such person, but the said purported signature was wholly fictitious.

OFFENSES AGAINST PUBLIC MORALS AND DECENCY.

BIGAMY. (§ 2362.)

That one —, on or about the — day of —, A. D. 18—, at —, [*state place of former marriage, if known,*] lawfully married one —; and afterwards, on the — day of —, A. D. 18—, the said — being then alive and still remaining the lawful wife of him, the said —, he, the said —, at the county of —, in the State of Kansas, did, unlawfully and feloniously, marry one —.

SAME, UNDER § 2364.

That one —, on or about the — day of —, A. D. 18—, at —, lawfully married one —; and, afterwards, on the — day of —, A. D. 18—, the said — being then alive and still remaining the lawful wife of him, the said —, he, the said —, at [*place of second marriage*] did unlawfully marry one —; and thereafter, to wit, on the — day of —, A. D. 18—, he, the said —, at the county of —, in the State of Kansas, did unlawfully and feloniously with her, the said [*second wife*], live and cohabit.

SAME, UNDER § 2366.

That one —, on or about the — day of —, A. D. 18—, at —, lawfully married one —; and afterwards, on the — day of —, A. D. 18—, the said — being then alive and still remaining the lawful wife of him, the said —, one —, being then and there an unmarried person and then and there well knowing him to be then and there the husband of the said —, and that she, the said —, still lived, did, at the county of —, in the State of Kansas, knowingly, unlawfully and feloniously marry him, the said —.

GUARDIAN CARNALLY KNOWING WARD. (§ 2370.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, being then and there the guardian of one —, a female then under the age of eighteen years, he, the said —, having been theretofore, by the probate court of said county, duly appointed such guardian, and having duly qualified and taken upon him said guardianship, did her, the said —, feloniously defile, by then and there carnally knowing her, the said —.

DISTURBING RELIGIOUS MEETING. (§ 2392.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, within a certain church edifice in which the congregation of a certain religious society, to wit, the — church of —, was then and there met and assembled for the purpose of and engaged in religious worship, — did, by [*describe mode of disturbance*], unlawfully and willfully disquiet and disturb the said congregation and the order and solemnity of said meeting.

TRADING WITHIN ONE MILE OF CAMP-MEETING. (§ 2394.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, within the distance of one mile from a certain park, [*or, field, or, grove,*] known as —, where a certain religious society, to wit, the —, were then and there assembled and collected for religious worship in a camp [*or, field*] meeting, did then and there unlawfully and willfully sell and expose for sale certain articles of traffic, to wit, [*give the general character of the wares,*]* he, the said —, not having then and there any written permit so to do from the trustees nor managers of said religious society.

CRUELTY TO ANIMALS. (§ 2402.)

That at the county of —, in the State of Kansas, one —, on the — day of —, A. D. 18—, did unlawfully, maliciously and cruelly beat a certain horse, [*ox, etc.,*] then and there the property of —, [*or, of him, the said —,*]

THE SAME.

That at the county of —, in the State of Kansas, one —, on the — day of —, A. D. 18—, did unlawfully, maliciously and cruelly maim [*or, torture*] a certain horse by [*describe the manner of maiming, or method of torture.*]

HUNTING ON SUNDAY. (§ 2439.)

That at the county of —, in the State of Kansas, one —, on the — day of —, A. D. 18—, the same being the first day of the week, commonly called Sunday, did unlawfully engage in hunting and shooting.

OBSCENE PUBLICATION, ETC.

(Session Laws 1891, ch. 161, p. 308.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one — did, unlawfully and knowingly, within said county and State, have in his possession for the purpose of then and there selling the same, [*or, did then and there unlawfully and knowingly expose for sale,*] a certain [*or, divers copies of a certain*] printed —, largely devoted to the publication of —, entitled —, and containing as the chief part of the contents thereof and as its principal features, [*here set out the general character of the contents, as, "Scandals about divers people, lecheries, accounts of intrigues between men*

* The exceptions mentioned in the *proviso* of this section are clearly matters of defense, which need not be negated in the information, except that as to the permit, which under prohibitory-law decisions it may be prudent to negative.

and women, and other immoral conduct of divers persons," etc.,] the which contents would be offensive to the court, and improper to be placed on the records thereof. *

THE SAME—SELLING.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one — did, unlawfully and knowingly, within said county and State, sell and publish to one —, a certain printed —, largely devoted to the publication of —, entitled —, and containing as the chief part of the contents thereof and as its principal features, [*set out the general character of the contents as in the preceding form,*] the which contents, etc. [*See note to preceding form.*]

OFFENSES AGAINST ELECTION LAWS.

USING FRAUDULENT BALLOT WITH DESIGNATED HEADING.

(§ 2664.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, there being then in progress in the townships and wards of said county [*or, wards of the city of — in said county*] a general election at which, among other officers, a — was to be elected, and the — party organization of said county [*or, city*] having provided for use at said election regular printed ballots with a certain designated heading, to wit, [*describe the designated heading,*] on which ballot was printed the name of — as the candidate for the said office, and said regular ballots being then and there in use by electors at said election, — willfully and unlawfully did then and there at the — voting precinct in — township [*or, ward, &c.,*] of said county, peddle and distribute divers ballots with the designated heading aforesaid containing the name of one —, instead of the name of the said —, printed [*or, pasted*] thereon as the candidate for said office of —, with the intent then and there to have said ballots voted at said election.

GIVING TICKET WITH FALSE INFORMATION TO ILLITERATE VOTER. (§ 2665.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, a general election being then and there duly in progress in the townships and wards of said county, [*or, wards of said city,*] and one —, being then and there a duly-qualified elector of — township of said county, [*or, ward of said city,*] duly entitled to vote at said election, and desiring and intending, as he, the said —, then and there well knew, to vote for one — for the office of —, which office, among others, was to be filled at said election; and, as he, the said —, also well knew, being then and there unable to read, — willfully and unlawfully, with the intent to induce him, the said —, to vote contrary to his inclinations, to wit, to vote for one —, instead of for the said —, for the said office, did then and there furnish to

* Within the general rules of criminal pleading, and under a number of decisions, there must be this excuse, which must be real, or the matter must be literally set forth. As this statute relates not to a particular article in the paper or pamphlet, but to the general character of the publication as a whole, the rule would probably require the whole publication to be set out. The pleader will find the subject fully discussed in the books on the law of libel, and in decisions under the U. S. postal laws.

him, the said —, a certain ballot, commonly called a ticket, and willfully, falsely and unlawfully then and there inform him, the said —, that said ballot contained the name of said —, a candidate for said office, when in truth and in fact, as he, the said —, then and there well knew, said ballot did not contain said name, but instead contained printed thereon as a candidate for said office the name of said —, for whom, as the said — then and there well knew, the said — did not desire nor intend to vote.

BETTING ON ELECTION. (§ 2391.)

That at the county of —, in the State of Kansas, on the — day of —, A. D. 18—, one — did, with one —, then and there unlawfully bet and wager the sum of — dollars in money, of the value of — dollars, that at the general election to be then next held in the State of Kansas, a candidate for the office of — of the State of Kansas, to be voted for at said election, would not receive more than — votes in the entire State of Kansas.

OFFENSES AGAINST PUBLIC HEALTH.

SELLING UNLABELED POISON. (§ 2400.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, he not being a practicing physician, did sell and deliver to one —, a certain substance [or, liquid] usually denominated poisonous, to wit, arsenic, [or, corrosive sublimate, or, prussic acid, or *whatever it was*,] without having the word "poison" then and there written or printed on any label attached to the vial, [or, box, or, vessel, or, package,] then and there containing the said poisonous substance, [or, liquid.]

SELLING POISON TO MINOR. (§ 2400.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, — did sell and deliver to one —, he, the said —, being then and there under the age of twenty-one years, a certain substance, [or, liquid,] usually denominated poisonous, to wit, arsenic, [or *whatever it was*,] without a written permission from the guardian of said —, specifying that said — was authorized to purchase said poisonous substance.

SELLING ADULTERATED MILK. (§ 2411.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, — did unlawfully and knowingly sell to one — as milk a certain quantity of milk diluted with water, [or *whatever the facts under the statute*,] with intent to then and there defraud him, the said —.

SELLING UNWHOLESOME PROVISIONS. (§ 2412.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, — did unlawfully and knowingly sell to one — a certain quantity of beef, [or *whatever the food*,] which was then and there, as he, the said —, then and there well knew, diseased and unwholesome in this, to wit, [state in what the diseased or unwholesome condition consisted,] without making the said diseased condition of said beef known to the said —, and he, the said —, being then and there in ignorance thereof.

MISCELLANEOUS OFFENSES.

CORPORATION FAILING TO DEPOSIT ANNUAL STATEMENT.

(§§ 1181, 2581.)

That the ———, then and there a corporation duly organized and existing under the laws of the State of Kansas, for profit, to wit, for the purpose of [*state enough of its corporate object to show it is a corporation for profit*], and having its place of business under its charter at the county of ———, in the State of Kansas, and having been in existence since long previous to the thirtieth day of December, A. D. 18—, did, on the first day of January A. D. 18—, at the said county of ———, in the State of Kansas, unlawfully fail to deposit with the Secretary of State of the State of Kansas, as in such case provided, a statement, under the oaths of the president and the secretary of said corporation, exhibiting the condition of said corporation on the thirtieth day of December then next preceding.

SECOND COUNT.

That the ———, being a corporation duly organized and existing under the laws of the State of Kansas, for profit, to wit, for the purpose of [*as above*], and having its place of business under its charter at the county of ———, in the State of Kansas, and having been in existence since long previous to the thirtieth day of December, A. D. 18—, did, at said county of ———, in the State of Kansas, unlawfully fail to deposit with the Secretary of State of the State of Kansas, on the first day of January, A. D. 18—, and has ever since unlawfully failed to so deposit, as in such case provided, a statement, under the oaths of the president and the secretary of said corporation, exhibiting the condition of said corporation on the thirtieth day of December then next preceding; but notwithstanding its said failure to deposit said statement, the said corporation, at the said county of ———, in the State of Kansas, did, during the entire month of January, A. D. 18—, unlawfully continue to transact its said business as such corporation.

(*Add an additional count for each succeeding month for which the corporation is liable.*)

OPENING SEALED LETTER. (§ 2403.)

That on the — day of ———, A. D. 18—, at the county of ———, in the State of Kansas, ———, without authority from either the said writer thereof or the said person to whom it was addressed, did unlawfully and willfully open [*or, open and read, or, cause to be read*] a certain lawful sealed letter written by one ———, and addressed to one ———, and not addressed to him, the said ———.

SENDING THREATENING LETTER.

That on the — day of ———, A. D. 18—, at the county of ———, in the State of Kansas, ———, knowingly and feloniously did send [*deliver, or whatever the fact may be*] to ———, a certain letter addressed to said ———, with the name of him, the said ———. [*or, with the fictitious name "Rob. Roy,"*] subscribed and signed thereto; and therein did feloniously threaten to accuse the said ——— with having committed upon one ——— the crime of rape, [*or briefly, whatever the crime may be,*] which letter was as follows, to wit, [*set out the letter,*] with the view and intent then and there and thereby feloniously to extort and gain money from the said ———.

UNLAWFUL ASSEMBLY, OR RIOT. (§ 2408.)

That on the — day of ———, A. D. 18—, at the county of ———, in the State of Kansas, one ———, ——— and ———, [*or, one ——— and other evil dis-*

posed persons to the number of three and more whose names are to ——— unknown.] did unlawfully assemble together with intent then and there, with force and violence, to unlawfully assault, beat and wound one ———; and being so, with said unlawful intent, assembled together, did, in pursuance of said unlawful intention and in preparation for the execution thereof, [*here state the nature of the attempt or preparation.*]

WRONGFULLY WEARING G. A. R. BADGE, ETC. (§ 2438.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, not being entitled under the rules and regulations of the department of Kansas, Grand Army of the Republic, [*or, by the commandery in chief of the Military Order of the Loyal Legion of the United States,*] so to do, did willfully and unlawfully wear the certain uniform [*or, the certain badge, insignia, button, or whatever may be the particular emblem*] worn, and, under said rules and regulations, to be worn and used by members of said order of the Grand Army of the Republic, [*or, of said Loyal Legion of the United States.*]

WEARING BADGE, ETC., TO OBTAIN AID OR ASSISTANCE. (§ 2438.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, one —, not being entitled under the rules and regulations of the department of Kansas, Grand Army of the Republic, [*or, the Military Order of the Loyal Legion of the United States,*] entitled to use nor to wear the same, did unlawfully and willfully use and wear [*an imitation of*] the certain uniform [*badge, insignia, button, or whatever it may be*] to be, under said rules and regulations, worn by members of the order of the Grand Army of the Republic, [*or, the Military Order of the Loyal Legion, etc.*] for the purpose and with the intent of thereby, as one supposed to be a member of said order, obtaining aid and assistance within the State of Kansas; and so using and wearing the said uniform, [*badge, button, etc.*] and with the intent and for the purpose aforesaid did then and there unlawfully and willfully solicit alms [*or, food, etc.,*] of one —.

LIQUOR LAW FORMS.

PETITION FOR INJUNCTION AGAINST PLACE WHERE LIQUORS ILLEGALLY SOLD.

IN THE DISTRICT COURT OF ——— COUNTY, IN THE STATE OF KANSAS.

THE STATE OF KANSAS, on relation of ———, county attorney,
 by of ——— county, in the State of Kansas, *Plaintiff*,

v.

—————, *Defendants*.

PETITION.

———, the county attorney of ——— county, in the state of Kansas, in the name and on behalf of the state of Kansas, informing and complaining shows: That the said ———, defendant, is, and during the time hereinafter mentioned has been, the owner of certain premises, to wit, lot number — on ——— street, in the city of ———, in ——— county, in the state of Kansas, on which stands a two-story building; and, except the occupancy and use thereof permitted by him as hereinafter stated, is and has been in the exclusive possession and control of said premises and the said building standing thereon; that the first floor or story of the said building is, and for the space of ——— last passed has been, a place kept and maintained by the said ———, defendant, with the knowledge, consent and permission of the said ———, for the sale and keeping for sale of intoxicating liquors to be used as beverages; [or, "although no permit for the sale of intoxicating liquors by the said ———, nor by any person at said place, has ever been granted or issued by the probate judge of said county"; or, "under the false pretense of the said ———, of selling such liquors as a druggist and only for medical, mechanical and scientific purposes, he pretending that the said place was and is a drug store, when in truth the said place is not and has not been in good faith a drug store, nor said liquors sold nor kept for sale with any honest regard to their use for said lawful purposes; but said place is, and has been, in actual fact a place kept for the sale and keeping for sale of liquors to be used as beverages, and said pretenses were and are wholly sham and fictitious and a mere cover for the unlawful business aforesaid"; etc.,] in persistent and habitual violation of the statute in that regard; to the common nuisance of the people of the state of Kansas; and the said ——— will continue, and the said ——— will permit him to continue, to keep and maintain there the said place for said unlawful purpose, unless restrained by the injunction of this honorable court.

WHEREFORE, The said county attorney, in the name and on behalf of the state of Kansas, prays that the said ——— may be forever enjoined from keeping or maintaining, and the said ——— from permitting to be kept or maintained, at, in or about the said premises, the said place, or any place, for the sale or keeping for sale of any intoxicating liquors *otherwise than in good faith for medical, mechanical or scientific purposes, and by authority of a druggist's permit obtained from and issued by the probate judge of said county;** and that in the meantime the said ——— may be enjoined from keeping or maintaining, or permitting or suffering to be kept or maintained, the said place now kept on the said first floor or story of the said building, and that the state of Kansas may have all other proper relief.

County Attorney of ——— County, Kansas.

*The practitioner must use his own judgment as to whether the words in italics in the prayer be not a necessary limitation upon the power of the court and essential to a legal injunction. The object of the italics is only to call attention to the fact that such a question is involved in these proceedings. Can the use of the premises be so *perpetually* enjoined that even a *lawful* business in future would be a contempt of court?

STATE OF KANSAS, — COUNTY, ss.

—, county attorney of — county, in the state of Kansas, being by me first duly sworn, deposes and says, that the statements contained in the foregoing petition subscribed by him are true, according to the best of his knowledge, information and belief.

Subscribed and sworn to before me, etc. _____.

ORDER FOR INJUNCTION.

THE STATE OF KANSAS, on relation of —, county attorney of — county, *Plaintiff*,
v.
—, *Defendant*.

It appearing from the duly verified petition of said —, county attorney, filed herein in the name and on behalf of the state of Kansas, that the [*describe place*] has been and is a place where intoxicating liquors are sold and kept for sale in violation of the statute of the state of Kansas in that regard, [*or, where persons are permitted to resort for the purpose of drinking intoxicating liquors as beverages,*] and that the said defendant has been and is the keeper of the said unlawful place for the said unlawful purpose; and the said county attorney by his said petition praying, in the name and on behalf of the state of Kansas, that the keeping and maintaining of the said place for the said unlawful purpose may be perpetually enjoined, suppressed and abated, as a common nuisance, and that the keeping and maintaining thereof may be enjoined during the pendency of this action: it is, upon motion of the said county attorney,

Ordered, That the said defendant, his agents and servants, be and they are hereby strictly commanded and enjoined to forthwith and henceforth utterly desist and refrain from keeping or maintaining at, in or about the said premises above described any place for the sale or keeping for sale of intoxicating liquors of any kind whatsoever for any purpose whatsoever [*or, where persons are permitted to resort, etc.*], until the further order of this court or of the judge thereof; it is further

Ordered, That an injunction issue accordingly.

INJUNCTION.

The State of Kansas, to —, greeting:

WHEREAS, By his duly verified petition, filed by the county attorney of — county, in the state of Kansas, in the district court of said county, in the name and on behalf of the state of Kansas, it has been represented that the — room of the — story of the certain — story — building, situated on lot number — on — street, in the city of —, in the said county, has been and is a place where intoxicating liquors are sold and kept for sale in violation of the statute of the state of Kansas in that regard, [*or, where persons are permitted to resort for the purpose of drinking intoxicating liquors as beverages,*] and that you have been and are the keeper of the said place for the said unlawful purpose; and said county attorney in said petition prays, in the name and on behalf of the state of Kansas, that the keeping and maintaining of said place for the said unlawful purpose may be perpetually enjoined, suppressed and abated as a common nuisance, and that the keeping and maintaining thereof may be enjoined during the pendency of the said action by said petition commenced: *Now, therefore*, you, your agents and servants, are hereby strictly commanded and enjoined, that you do forthwith and henceforth utterly desist and refrain from keeping or maintaining at, in or about the said above-described premises any place for the sale or keeping for sale of intoxicating liquors of any kind whatsoever for any purpose whatsoever, until the further order of the said district court or of the judge thereof.

WITNESS my hand and the seal of the said district court of — county, in the state of Kansas, by me affixed at my office in said county, this — day of —, A. D. 18—.

Clerk of the District Court, etc.

COUNTY ATTORNEY'S SUBPOENA.

The State of Kansas, to the Sheriff of — County, greeting:

WHEREAS, I, —, county attorney of — county, in the state of Kansas, have been duly notified that — * in, at or about a certain —, situate — in said — county, has recently been guilty of selling and keeping for sale intoxicating liquors in violation of the provisions of the act entitled "An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes," approved February 19, 1881, and the act amendatory of and supplemental thereto, approved March 7, 1885; and that said place is a place where intoxicating liquors are sold, bartered and given away in violation of the provisions of said acts; and

WHEREAS, It has thereby become my duty to diligently inquire into the facts of such reported violations of said acts; and

WHEREAS, I have reason to believe that —, in said — county, ha— information and knowledge of said violations of said acts:

These are, therefore, to command you, That you do forthwith notify said — to appear before me, —, county attorney of said — county, at —, in said county, on the — day of —, A. D. 18—, at — o'clock in the — noon, then and there to testify before me concerning said violations of said acts; and you will make due return to me of this writ.

WITNESS my hand, at my office in —, in said — county, this — day of —, A. D. 18—.

County Attorney of — County, Kansas.

COUNTY ATTORNEY'S ATTACHMENT.

The State of Kansas, to —, Sheriff of — County, in said State, greeting:

WHEREAS, On the — day of — A. D. 18— it having become my duty as county attorney of said — county, in the state of Kansas, because of due notification to me theretofore duly given of a certain violation of the act of the legislature of the state of Kansas entitled "An act amendatory and supplemental to chapter 128 of the Session Laws of 1881, being an act entitled 'An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes,'" approved March 7, 1885, to diligently inquire into the facts of such alleged violation of said act; and having reason to believe that one —, of said county, had information and knowledge of said alleged violation of said act, I did, as such county attorney, duly sign and issue my certain subpoena, as by said act and in such cases provided, directed to the sheriff of said — county, thereby requiring and commanding the said — to appear before me, at — in said county, on the — day of — A. D. 18—, at — o'clock —. m. of said day, then and there to testify before me concerning said violation of said act; which said subpoena was delivered by me forthwith to said sheriff, and was by him duly served upon said —, at said — county, on the — day of — A. D. 18—, as by return thereof to me by said sheriff fully appears; and the time so fixed for h— said appearance having fully passed, and said — having wholly failed to attend before me as — was as aforesaid

* If reputed offender's name unknown — "some persons to me unknown."

required and commanded, and no excuse for said disobedience to said subpoena appearing:

These are, therefore, to command you, That you do forthwith arrest the said — and bring h— before me, at — in said — county, on the — day of — A. D. 18—, at — o'clock —. M., to give h— testimony and be examined, as aforesaid, and to answer for h— said contempt in disobeying my said subpoena. And have you then and there this writ, with your due and proper return thereof,

WITNESS my hand, at — in said — county, in the state of Kansas. this — day of — A. D. 18—.

County Attorney of — County, Kansas.

COUNTY ATTORNEY'S COMMITMENT.

The State of Kansas, to —, Sheriff of — County, in said State, greeting:

WHEREAS, On the — day of — A. D. 18—, it having become my duty as county attorney of said — county, in the state of Kansas, because of due notification to me theretofore duly given of a certain violation of the act of the legislature of the state of Kansas entitled "An act amendatory and supplemental to chapter 128 of the Session Laws of 1881, being an act entitled 'An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes,'" approved March 7, 1885, to diligently inquire into the facts of such alleged violation of said act; and having reason to believe that one —, of said county, had information and knowledge of said alleged violation of said act. I did, as such county attorney, duly sign and issue my certain subpoena as by said act in such cases provided, directed to the sheriff of said — county, thereby requiring and commanding the said — to appear before me at — in said county, on the — day of — A. D. 18—, at — o'clock —. M. of said day, then and there to testify before me concerning said violation of said act; which said subpoena was delivered by me forthwith to said sheriff, and was by him duly served upon said — at said — county, on the — day of — A. D. 18—, as by return thereof to me by said sheriff fully appears; and the said — having appeared before me as by said subpoena required, and having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and true answer make to all questions which might be propounded by me, touching violations of the provisions of said act, or the act to which said act is amendatory, and the following question having been by me then and there duly propounded to h—, to wit: [*insert questions as asked*]; and said — has therefore by me been duly adjudged guilty of contempt of my lawful authority and process by his said refusal; and I have thereupon duly ordered that h— be imprisoned in the county jail of said — county, there to remain until h— shall submit to answer said question [*or questions*]:

These are, therefore, to command you, That you do forthwith arrest and take into your custody h—, the said —, and h— commit to the county jail of said — county, and h— there safely keep and imprison until h— shall submit to answer said question [*or questions*,] or be otherwise duly discharged. And you will make due return to me of this writ.

Witness my hand, at — in said — county, in the state of Kansas, this — day of — A. D. 18—.

County Attorney of — County, Kansas.

COUNTY ATTORNEY'S CERTIFICATE OF WITNESS' FEES.

STATE OF KANSAS, — COUNTY, ss.

To the Board of County Commissioners of — County, Kansas:

I do hereby certify, that in obedience to my subpoena so commanding, issued under and by authority of section 8, of chapter 149, of the Session Laws of Kan-

sas of 1885, ——— attended before me as a witness — day—, and necessarily and actually traveled — miles in so attending and returning, and is entitled to be paid \$— fees and \$— mileage, being \$— in all, therefor.

Witness my hand, this — day of — A. D. 18—.

County Attorney.

RETURN BY COUNTY ATTORNEY OF TESTIMONY TAKEN BEFORE HIM.

STATE OF KANSAS, — COUNTY, ss.

In the matter of an inquiry instituted and carried on by and before ———, county attorney of ——— county, in the state of Kansas, by authority of section 8, of chapter 149 of the Session Laws of 1885, concerning alleged violations of chapter 128 of the Session Laws of 1881, and chapter 149 of the Session Laws of 1885, at ——— in said county. }

I ———, county attorney of said ——— county, in the state of Kansas, do hereby certify, that on the — day of — A. D. 18—, having been duly notified of the illegal selling and keeping for sale of intoxicating liquors at a certain place in said county, I duly issued and delivered to the sheriff of said county my certain subpoena, therein and thereby commanding certain persons who, as I had reason to believe, had information and knowledge of such illegal selling and keeping for sale of intoxicating liquors to appear before me, at ——— in said county, on the — day of — A. D. 18—, at — o'clock —. M., then and there to testify concerning said violation of law; which said persons so commanded were as follows: ———. And said subpoena, having been duly served on said persons by said sheriff, was by him duly returned to me; and said subpoena, with said return thereon, is hereto attached, marked "A"; and at the time and place as aforesaid stated in said subpoena, and in obedience to said subpoena, came before me ———, one of said witnesses, who being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and to true answer make to all questions which may be propounded to h— by me, touching any violations of the provisions of the act entitled "An act amendatory and supplemental to chapter 128 of the Session Laws of 1881, being an act entitled 'An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes,'" approved March 7, 1885, or of the act to which said act was amendatory, thereupon deposed as follows, in answer to questions propounded by me: Question 1. What is your name, age, residence, and occupation? Answer. My name is ———. My age is — years. I reside in ———. My occupation is that of a ———. Q. 2. ———?

Also, at the same time and place, and likewise in obedience to said subpoena, came ———, another of said witnesses, who, being by me duly sworn in the same manner, thereupon deposed as follows, in answer to questions propounded by me: Question 1. What is your name, age, residence, and occupation? Answer. My name is ———. My age is — years. I reside in ———. My occupation is that of a ———. Question 2. ———?

And I do further certify, that the foregoing testimony was reduced to writing in my presence and in the presence of said witnesses respectively, at the time said testimony was given, by ———, a disinterested person deputed by me, and was signed by said witnesses respectively at the time and in my presence.

In witness whereof, I have hereunto set my hand, this — day of —, A. D. 18—, at my office in said county.

County Attorney of ——— County, Kansas.

COMMENCEMENT OF INFORMATION ON COUNTY ATTORNEY'S
INQUISITION.—PLACE AND UNKNOWN KEEPER.

IN THE ——— COUNTY DISTRICT COURT.

THE STATE OF KANSAS, *Plaintiff*,
v.

CRIMINAL ACTION

No. —.

and the unknown keeper thereof, *Defendant*—.

WHEREAS, Upon a certain inquiry by and before me lately instituted and carried on at ——— in said ——— county, in the state of Kansas, into and concerning certain violations of an act of the legislature of the state of Kansas, entitled "An act amendatory and supplemental to chapter 128 of the Session Laws of 1881, being an act entitled 'An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes,'" approved March 7, 1885, and of the act to which said act is amendatory and supplemental, to me theretofore duly alleged and notified, the testimony of certain witnesses, to wit: ———, then and there attending, appearing and deposing before me, in obedience to my certain subpoena so commanding theretofore duly issued and served, each of said witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and true answer make to all questions which by me might be propounded touching any violations of the provisions of said acts or of either of them; and which testimony was then and there reduced to writing, and signed by said witnesses respectively, and is now filed herewith, did and does disclose that in the place hereinafter particularly described, and within said county of ———, intoxicating liquors are being there unlawfully sold and kept for unlawful sale, as hereinafter more specifically and formally charged, by ———, [or, a certain person to said witnesses and to me unknown, but in and by said testimony described as hereinafter set forth and charged,] and that said ——— [or, said unknown person so described,] has in his possession at the said place hereinafter described, the property hereinafter described, and there keeps and uses the same for the unlawful purposes hereinafter charged:

Now, THEREFORE, I ———, county attorney of ——— county, in the state of Kansas, in the name and by the authority of the state of Kansas, come now here and give the court to understand and be informed, that, etc. [*Proceed with charges and counts as in other informations.*]

CONCLUSION OF INFORMATION CONTAINING NUISANCE AND
SEIZURE COUNTS.

WHEREFORE, I, ———, county attorney as aforesaid, in the name and by the authority of the state of Kansas, do pray that a warrant may issue for the arrest of the said unknown person hereinbefore particularly described, and for the seizure of the said liquors, vessels and property hereinbefore described, and that such proceedings may thereupon be had as in such cases provided by law; that said liquors, vessels and property may be publicly destroyed; and that said place may be declared a common nuisance and may be shut up and abated, and all intoxicating liquors found therein upon such abatement, together with all signs, screens, bars, bottles, glasses, and other property used in keeping and maintaining said place, destroyed; and that such other and further proceedings may be had as in such cases provided by law.

County Attorney of ——— County, Kansas.

STATE OF KANSAS, — COUNTY, ss.

—, county attorney of said — county, being by me first duly sworn, deposes and says, that the foregoing information subscribed by him is true, according to the best of his information and belief.

Subscribed and sworn to before me, on this — day of —, A. D. 18—.

CONCLUSION OF INFORMATION CONTAINING COUNTS FOR SEIZURE OF STOCK AND FOR CANCELLATION OF PERMIT.

WHEREFORE, I, —, county attorney as aforesaid, in the name and by the authority of the state of Kansas, do pray that a warrant may issue for the arrest of the said —, and for the seizure of the said liquors, vessels and property hereinbefore described, and that such proceedings may thereupon be had as in such cases provided by law; that said liquors, vessels and property may be publicly destroyed; and that said permit may be declared forfeited, and the said — be declared to have forfeited, for five years, his right to obtain any further permit; and that such other and further proceedings may be had as in such cases provided by law.

County Attorney of — County, Kansas.

STATE OF KANSAS, — COUNTY, ss.

—, county attorney of said — county, being by me first duly sworn, deposes and says, that the foregoing information subscribed by him is true, according to the best of his information and belief.

Subscribed and sworn to before me, on this — day of —, A. D. 18—.

SPECIAL COUNTS.

FOR SELLING WITHOUT PERMIT.

That —, at the county of —, in the state of Kansas, on the — day of —, A. D. 18—, without having procured from the probate judge of said county any permit to sell intoxicating liquors, did then and there unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors.

ADDITIONAL SALE WITHOUT PERMIT.

— COUNT.— And I do further give the court to understand and be informed, that the said —, on the — day of —, A. D. 18—, at the said county of —, in the state of Kansas, without having procured from the probate judge of said county any permit to sell intoxicating liquors, did then and there, by means of a further and different sale from any already charged in this information, unlawfully sell and barter other spirituous, malt, vinous, fermented and other intoxicating liquors.

AGAINST ONE NOT IN GOOD FAITH A DRUGGIST.

That —, at the county of — in the state of Kansas, on the — day of —, A. D. 18—, he, the said —, being then and there a person not lawfully and in good faith engaged in the business of a druggist, did then and there unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors.

ADDITIONAL COUNT AGAINST SAME.

— COUNT.— And I do further give the court to understand and be informed, that the said —, on the — day of —, A. D. 18—, at said county of —, in the state of Kansas, he, the said —, being then and there a

person not lawfully and in good faith engaged in the business of a druggist, did then and there, by means of a further and different sale from any already charged in this information, unlawfully sell and barter other spirituous, malt, vinous, fermented and other intoxicating liquors.

DRUGGIST SELLING WITH REASON TO BELIEVE LIQUORS WANTED FOR UNLAWFUL USE.

That ———, of the county of ———, in the state of Kansas, on the — day of ———, A. D. 18—, he, the said ———, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one ———, he, the said ———, having then and there reason to believe that the said ——— was then and there obtaining said liquors with intent to use the same as a beverage, and to sell and give away the same, and did not intend to use the said liquors for medical, scientific nor mechanical purposes.

ADDITIONAL COUNT OF SAME CHARACTER.

——— COUNT.—And I do further give the court to understand and be informed, that the said ———, on the — day of ———, A. D. 18—, at the said county of ———, in the state of Kansas, he, the said ———, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there, by means of a further and different sale and barter from any already charged in this information, unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one ———, he, the said ———, having then and there reason to believe that the said ——— was then and there obtaining said liquors with intent to use the same as a beverage, and to sell and give away the same, and did not intend to use the said liquors for medical, scientific nor mechanical purposes.

DRUGGIST SELLING TO PERSON IN HABIT OF BECOMING INTOXICATED.

That ———, of the county of ——— in the state of Kansas, on the — day of ———, A. D. 18—, he, the said ———, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one ———, he, the said ———, being then and there a person who was in the habit of becoming intoxicated, as he the said ———, then and there knew and had reason to believe.

ADDITIONAL COUNT OF SAME CHARACTER.

——— COUNT.—And I do further give the court to understand and be informed, that the said ———, on the — day of ———, A. D. 18—, at the said county of ———, in the state of Kansas, he, the said ———, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there, by means of a further and different sale and barter from any already charged in this information, unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one ———, he, the said ———, being then and there a person who was in the habit of becoming intoxicated, as he, the said ———, then and there knew and had reason to believe.

DRUGGIST SELLING TO PERSON UNDER INFLUENCE OF INTOXICATING LIQUORS.

That —, of the county of —, in the state of Kansas, on the — day of — A. D. 18—, he, the said —, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one —, he, the said —, being then and there under the influence of intoxicating liquors, as he, the said —, then and there knew and had reason to believe.

ADDITIONAL COUNT OF SAME CHARACTER.

— COUNT.—And I do further give the court to understand and be informed, that the said —, on the — day of — A. D. 18—, at the said county of — in the state of Kansas, he, the said —, being then and there engaged in the business of a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there, by means of a further and different sale and barter from any already charged in this information, unlawfully sell and barter spirituous, malt, vinous, fermented and other intoxicating liquors to one —, he, the said —, being then and there under the influence of intoxicating liquors, as he, the said —, then and there knew and had reason to believe.

DRUGGIST SELLING TO PERSON TO WHOM PREVIOUSLY FORBIDDEN TO SELL.

That he, the said —, being then and there a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there unlawfully sell, barter and give to one —, and let him have, spirituous, malt, vinous, fermented and other intoxicating liquors, he, the said —, having theretofore been duly notified by the — of the said — that he, the said —, who was in said notification named, used intoxicating liquors as a beverage, and he, the said —, having been theretofore also forbidden by the said — of the said — from selling, bartering or giving any intoxicating liquors to him, the said —.

ADDITIONAL COUNT OF SAME CHARACTER.

— COUNT.—And I do further give the court to understand and be informed, that the said —, on the — day of —, A. D. 18—, at the said county of — in the state of Kansas, he, the said —, being then and there a druggist, and having then and there a permit from the probate judge of said county to sell intoxicating liquors for medical, scientific and mechanical purposes, did then and there, by means of a further and different sale and barter from any already charged in this information, unlawfully sell, barter and give to one —, and let him have, spirituous, malt, vinous, fermented and other intoxicating liquors, he, the said —, having theretofore been duly notified by the — of the said — that he, the said —, who was in said notification named, used intoxicating liquors as a beverage, and he, the said —, having been theretofore also forbidden by the said — of the said — from selling, bartering or giving any intoxicating liquors to him, the said —.

ALLEGATION TO OBTAIN CANCELLATION OF PERMIT.

And I do further give the court to understand and be informed, that on the — day of —, upon due application and consideration, the probate judge of said county of — duly issued his certain permit of that date to the said —,

(which permit was numbered — and was recorded at page — of journal — of the probate court of said county,) authorizing the said — for the period of one year thereafter to sell in said county intoxicating liquors for medical, scientific and mechanical purposes only; which said permit is still in full force and effect, unrevoked, and, by reason of the commission of the offenses hereinbefore charged, is by law subject to be declared forfeited in these proceedings.

ADDED COUNT TO OBTAIN SEIZURE OF LIQUORS, ETC.

And I do further give the court to understand and be informed, that the said —, at and in a certain — to wit: —, in said — county, in the state of Kansas, did, at the respective dates of the several offenses hereinbefore charged, then and there have and keep in his possession there, and then and there used and employed the same in and about and for the commission of the said offenses; and then and there did at said dates, and still does there, keep and have in his possession for the purpose of using and employing, and uses and employs the same, in and about and for the purpose of keeping there an unlawful place for the unlawful sale and keeping for unlawful sale of intoxicating liquors, to be used as beverages and not for medical, scientific nor mechanical purposes, certain property, intoxicating liquors, and vessels and bottles containing intoxicating liquors, now at said place in his possession kept, to wit: —

— COUNT.— And I do further give the court to understand and be informed, that — in said county of — in the state of Kansas, is a place where intoxicating liquors are constantly, habitually and as a business unlawfully sold and unlawfully kept for unlawful sale to be used as beverages, and not for medical, scientific nor mechanical purposes, and that said place is so unlawfully kept and maintained, and said intoxicating liquors there so unlawfully sold and unlawfully kept for unlawful sale by the said —, to the common nuisance of the people of the state of Kansas.

MISCONDUCT IN OFFICE. (§ 2532.)

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, being then and there the duly appointed, [or elected,] qualified and acting police judge of the city of —, a duly incorporated city of the — class, situate in said county, and then and there having notice, and well knowing, that one — was then and had been the owner and keeper of a certain place in said city for the sale and keeping for sale of intoxicating liquors for use as beverages, and was not then and there and had not been a druggist; and was then and there engaged in the business of unlawfully selling and keeping for sale intoxicating liquors to be used as beverages; and he, the said —, police judge as aforesaid, then and there well knowing that — and — were witnesses by whom the said unlawful keeping by the said — of the said place for the said unlawful purpose and the said unlawful sale and keeping for sale of said liquors as beverages could be proved, did then and there unlawfully and willfully fail to notify the county attorney of said county of the said unlawful place, and of the said unlawful selling and keeping for sale of intoxicating liquors; and did then and there unlawfully and willfully fail to furnish said county attorney with the names of said witnesses, and so ever since has unlawfully and willfully failed to notify said county attorney and to furnish him said names.

PERJURY IN AN AFFIDAVIT TO OBTAIN LIQUORS.

That on the — day of —, A. D. 18—, at the county of —, in the State of Kansas, —, unlawfully intending then and there to obtain — of whisky to be used by him as a beverage and not for medical, mechanical nor scientific purposes, of —, then and there a druggist having from the Pro-

bate Judge of said county a duly granted permit to sell intoxicating liquors for medical, mechanical and scientific purposes, did then and there to the said ——— unlawfully apply for the said whisky; and in order to unlawfully obtain the same did then and there, before the said ———, then and there duly competent to administer the same, take his corporal oath, and thereupon did then and there, upon his said oath, unlawfully, feloniously, willfully, knowingly and corruptly, for the purpose of so unlawfully obtaining the said whisky for said unlawful purpose, sign, make and swear to a certain written and printed affidavit as follows, to wit, *[set out the statement.]* Whereas, in truth, the said ——— of whisky was not nor was any part thereof necessary nor actually needed by ——— as a medicine for the disease of ——— nor any disease whatever; and said whisky was then and there intended by said ——— for a beverage, and said affidavit was, in both said particulars, then and there willfully, knowingly and corruptly false.

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